Supreme Court, U.S.
FILED
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90-1397

No. _____

SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1990

IN RE JONATHAN B. AINSWORTH,

Petitioner

V.

CALIFORNIA STATE SUPREME COURT,

STATE BAR OF CALIFORNIA,

Respondents,

PETITION FOR A WRIT OF MANDAMUS,
OR IN THE ALTERNATIVE
FOR A WRIT OF PROHIBITION
PURSUANT TO
28 U.S.C. SECTION 1651
TO THE SUPREME COURT OF CALIFORNIA

APPENDIX TO
JURISDICTIONAL STATEMENT

JONATHAN AINSWORTH
2237 S. Acadian Thruway
Suite 301
Baton Rouge, Louisiana 70808
Telephone: (504) 923-0311
Petitioner
In Propria Persona

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SUPREME COURT OF CALIFORNIA
SAN FRANCISCO, CALIFORNIA
ROBERT F. WANDRUFF
Court Administrator and
Clerk of the Supreme Court

JOHN C. ROSSI
Chief Deputy

SAN FRANCISCO

OFFICES
SAN FRANCISCO 94102
4250 State Building
(415) 557-0587

ROBERT F. JOHNSON
Chief Deputy
Los Angeles

LOS ANGELES 90010
3580 Wilshire Blvd.

SACRAMENTO 95814
100 Library and
Courts Bldg.
(916) 322-5957

November 21, 1990

Jonathan Ainsworth
2237 S. Acadian Thruway, Suite 301
Baton Rouge, Louisiana 70808

Re: S015710 - Ainsworth v.
State Bar of California

Dear Mr. Ainsworth:

Returned unfiled in your Application of a Writ of Error Coram Nobis and your Supplemental Points and Authorities received November 20, 1990, at our Los Angeles office. The petition for such a writ was denied on May 30, 1990. I have enclosed a copy of the order filed that day for your records.

Very truly yours,

ROBERT F. WANDRUFF
Court Administrator and
Clerk of the
Supreme Court

By: John C. Rossi
Assistant Clerk-
Administrator

Enclosure

5015710
No. S004517

IN THE SUPREME COURT OF THE
STATE OF CALIFORNIA

IN BANK

JONATHAN B. AINSWORTH

V.

STATE BAR OF CALIFORNIA

Petition for writ of error coram nobis DENIED.

SUPREME COURT
FILED
May 30, 1990

Robert Wandruff
Clerk

_____
Deputy

Lucus
Signed

_____
Chief Justice

IN THE SUPREME COURT OF
THE STATE OF CALIFORNIA

JONATHAN BASS AINSWORTH Petitioner, v. THE STATE BAR OF CALIFORNIA Respondent.	)	S004517

BY THE COURT:

We review the unanimous recommendation of the Review Department of the State Bar Court that petitioner be disbarred. The review department adopted the findings and conclusions of the hearing panel. We accept these findings as our own and agree disbarment should be imposed. [1]

I. FINDINGS OF FACT

Petitioner was admitted to practice in 1974. The proceedings below concerned eight specific instances of misconduct between 1979 and 1984.

The disciplinary proceeding consisted of two consolidated cases. In two notices to show cause, filed in February 1985 and January 1986, petitioner was charged with committing numerous serious violations of the Business and Professions Code and the Rules of Professional Conduct, [1/] including: (i) violating his oath and duties as an attorney (6067, 6068, and 6103); (ii) committing acts

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1/ Unless otherwise noted, all section references are to the Business and Professions Code. All references to rules are to the Rules of Professional Conduct.

involving moral turpitude (6106); (iii) appearing without authority as an attorney for a party to an action or proceeding (6104); (iv) violating a court order (6103), and misleading a tribunal (rule 7-105); (v) delaying his client's suit to promote his own gain and prosecuting an appeal solely for the purposes of delay (6103, 6106); (vi) failing to preserve the confidences of his client (6068, subd. (e)); (vii) committing acts of deceit with intent to mislead the court and a party to the action (6068, subd. (d); rule 7-105); (viii) practicing law while suspended (6125); and (ix) entering into a fee splitting arrangement with a nonlawyer (rule 3-102). Petitioner appeared in propria persona at the December 1986

hearing. We set forth the hearing panel's findings in detail as follows.

A. State Bar Case No. 85-0-24

1. The Haschemi Matter

In October 1979, Hassan Haschemi retained petitioner to represent his business interests. On Haschemi's behalf, petitioner filed a lawsuit on December 20, 1979, entitled Tchacosh Company, Ltd., et al. v. Government and State of Iran et al. in the Central District of the United States District Court (hereinafter Tchacosh lawsuit). Among the plaintiffs in this Petru International Corporation (Petru). Subsequently, Haschemi discharged petitioner as his counsel, and hired Miller to replace him.

Miller forwarded a substitution of attorney form to petitioner, with a

letter requesting the substitution be signed and returned to Miller for filing with the court. The letter also requested petitioner to send to Miller's office all documents and evidence concerning Haschemi and the Tchacosh lawsuit. Petitioner ignored Miller's request and instead demanded Miller send him a certified check for $40,000 in attorney fees. In June 1981, petitioner mailed to the federal district court an altered version of the substitution form (without proof of service) that had been sent to him by Miller.[2/] Petitioner failed to notify either Miller or the court of the alternation.

2/ Petitioner had added the following sentence to the substitution form: "I will remain as attorney of record for Petur, Tchacosh Company, Inc., Siporex Company, Inc., and Gastawar Company, Inc."

For the next six months, petitioner engaged in litigation against Miller and Haschemi, claiming he was president and general counsel of Petru, and that he had the right to represent Petru in the Tchacosh lawsuit. In July 1981, the court ordered that Miller be substituted for petitioner as counsel for all plaintiffs in the Tchacosh lawsuit and that petitioner turn over to Miller all relevant materials and case filed pertinent to the pending litigation. In January 1982, petitioner was found guilty of contempt for failing to obey the court's July 1981 order. Two weeks later, the court ordered petitioner to pay plaintiffs $3,136.04 in attorney fees. At the time of the State Bar hearing in 1986, however, petitioner had not paid the attorney fees, nor had he

complied with the court's previous order.

After reviewing the facts surrounding the Haschemi matter, the hearing panel found that petitioner violated his oath and duties as an attorney within the meaning of section 6103 by disobeying the court's July 1981 order, delaying the Haschemi suit with a view to his own gain, prosecuting an appeal solely for purposes of delay and committing acts of deceit with intent to mislead Haschemi. In addition, the hearing panel found petitioner committed acts involving moral turpitude, dishonesty and corruption in violation of section 6106 and failed to preserve the confidences and secrets of Haschemi in violation of section 6068, subdivision (3).

2. The Ghasemloo Matter

In connection with his representation of Haschemi, petitioner entered into an agreement with Farid Afshar Ghasemloo, whereby Ghasemloo was to assist in trial preparation relating to the Tchacosh lawsuit. Pursuant to the foregoing agreement, petitioner agreed to split his attorney fees with Ghasemloo, who was not a licensed attorney. The hearing panel found the fee splitting arrangement violated rule 3-102 and section 6103.

3. The Wetherford Matter

In October 1983, petitioner filed on behalf of his clients (Mr. and Mrs. Wetherford), an action against all 58 California counties in the federal district court, entitled Patricia Salizar v. Board of Supervisors of San

Francisco County (Salizar). In the suit, he asserted that the practice of charging parents for the operating of juvenile hall was unconstitutional. In paragraph four of the complaint, petitioner falsely alleged that charging parents for the operation of juvenile hall had been declared unconstitutional by the California Supreme Court in In re Jerald C. in 1982 and 1983.[3/]

This court filed a decision in Jerald C. in December 1982. Although the court granted a rehearing in March 1982, petitioner failed to inform the Salizar court of this fact.

3/ In re Jerald C. was decided by this court in 1984 (36 Cal 3d.1).

Moreover, in November and December 1983, the Santa Clara and San Diego County Counsels' offices notified petitioner that the rehearing in Jerald C. had been granted. Petitioner still did not inform the district court that rehearing had been granted in Jerald C.

In November 1983, the district court dismissed the complaint in Salizar, and gave petitioner 30 days to file an amended complaint. When petitioner failed to file an amended complaint, the court dismissed the Salizar action.

In January 1984, petitioner filed, on behalf of Mr. and Mrs. Wetherford, an action in the federal district court against several California counties, entitled Ramirez v. County of Alameda. In Ramirez,

petitioner again falsely represented to the court that the charging practice referred to above had been declared unconstitutional by this court in Jerald C., supra, 36 Cal.3d 1. Petitioner failed to disclose to the court that at the time he filed the Ramirez action, rehearing had been granted by this court, and no new decision in Jerald C. had been filed.

On April 6, 1984, the federal district court granted petitioner's request to dismiss Ramirez. As of that date, we had not filed a decision in the Jerald C. matter. On April 20, 1984, we filed our decision, holding that parents were not required to reimburse the county for the minor's custodial care and support while the minor was in the custody of juvenile hall. (Jerald C.,

supra, 36 Cal.3d 1, 10.)

In October 1984, petitioner filed a second amended class action in the federal district court entitled Bouzek et al. v. County of Santa Clara. Mr. Wetherford, a named plaintiff, received a mailed copy of the complaint. The complaint contained petitioner' office address. Bouzek was decided by the court in February 1985.

In June 1985, petitioner notified by mail all plaintiffs in Bouzek of the court's decision, and inquired whether they wanted to refile the case in state court. When the Wetherfords attempted to contact petitioner, they found his phone disconnected and were unable to reach him at his office address. The hearing panel found that petitioner failed to

notify the Wetherfords that he had moved.

After considering the foregoing, the hearing panel concluded petitioner violated his oath and duties as an attorney by failing to notify the Wetherfords of a change in his office address and telephone number (6103); committed acts with intent to mislead the Wetherfords and the court by misrepresenting the status of Jerald C.: and sought to deceive the court with a false statement of law (rule 7-107, (6068, subd. (d)}).

4. The Archuleta Matter

In June 1983, after five-year old Jacob Archuleta was injured in an automobile accident, his parents employed petitioner to represent Jacob in a personal injury claim against the

automobile driver (defendant). Petitioner subsequently agreed to a $10,000 settlement with the defendant's insurance carrier, American States Insurance Co. (ASIC). At petitioner's request, ASIC paid $3,483.51 to Jacob's mother. She paid petitioner $3,000 of the payment as attorney fees before he filed and received court approval of a petition for the compromise of Jacob's claim. Eventually, ASIC's attorney filed an amended petition on behalf of plaintiffs, informing the court that petitioner had collected $3,000 as an advance on his anticipated attorney fees. The court eventually approved the $10,000 settlement and ordered petitioner to refund $500 of the previously collected fee, which he did. The hearing panel found that petitioner

violated his oath and duties as an attorney (6103), violated rule 2-107 by collecting an illegal fee, and committed an act with intent to deceive the court (6068, subd. (d)).

5. Practicing Law While Suspended

From July to August 1980, July to August 1981, and June to October 1983, petitioner was suspended from the practice of law in California for failure to pay his State Bar dues. While he was suspended in 1981, petitioner filed client, Haschemi, for breach of contract. In addition, while suspended in 1983, petitioner filed the Archuleta complaint in Contra Costa County Municipal Court. The hearing panel concluded that by practicing law while suspended, petitioner violated

section 6103 and 6125.

6. Tendering Checks With Insufficient Funds

On three separate occasions during 1983 and 1984, petitioner tendered checks with insufficient funds to the State Bar, Mrs. Archuleta, and the federal district court, in violation of petitioner's oath and duties as an attorney under section 6103.

B. State Bar Case No. 86-0-0006

1. The Karen U. Matter

In 1982, James M. and Karen M. U. (Karen) (husband and wife) hired petitioner. At petitioner's request, Karen signed the registration on her Lincoln Continental automobile over to petitioner who was to assume the balance of the loan against the car and apply the equity toward payment of his

attorney fees. Shortly thereafter James M. died, and Karen requested petitioner to pursue a wrongful death claim relating to James's death, and to handle the probate of his estate.

In May 1982, petitioner sent Karen a letter, stating that he was withdrawing as her counsel because he believed she wanted to alter certain records to be used at trial. He stated that James's holographic will which she had given petitioner to probate was not in James's handwriting. The letter did not request attorney fees.

Karen subsequently employed other counsel to probate her late husband's will. After the will was probated, the court allowed $4,050 in statutory attorney fees to the new counsel. In 1983, however, petitioner

filed a "Petition to Void Will and a Petition for Allowance of Attorneys Fees or Allowance of Extraordinary Expense." Petitioner claimed $1,900 in attorney fees for work allegedly performed on Karen's behalf. Petitioner charged Karen with forging James's will, concealing assets of the estate from the court, murdering James, and operating an illegal pyramid scheme. In September 1983, petitioner caused the matter to be taken off calendar and has taken no action on the petition since then.

In May 1984 in an action filed to establish ownership of the Lincoln Continental, petitioner obtained a default judgment against Karen in the amount of $15,000 and decreeing petitioner's ownership of the car. In an attempt to collect the $15,000,

petitioner in June 1984 filed a suit in Alameda County entitled Ainsworth v. [B.], in which he sought to set aside a transfer of real estate from Karen to her parents (the B.'s). In connection with this lawsuit, petitioner filed a declaration in which he accused Karen of murdering her husband, stealing his estate, forging his will and stealing petitioner's car. Eventually, Karen's new counsel was successful in setting aside the default judgment.

Based on the foregoing, the hearing panel concluded petitioner wilfully violated his oath and duties as an attorney (6103); failed to maintain such actions, proceedings and defenses as appeared to him legal or just (6068, subd. (c)); failed to abstain from "offensive personality" and advanced

facts prejudicial to the honor or reputation of Karen, although such conduct was not required by the "justice of the cause" (6068, subd. (f)); encouraged commencement of an action against Karen from a corrupt motive (6068, subd. (g)); failed to employ, for the purpose of maintaining the causes confided to him, such means only as are consistent with the truth (6068, subd. (d)) and failed to maintain inviolate the confidences and secrets of Karen (6068, subd. (e)).

2. The Phyillaier Matter

In February 1982, petitioner represented Phyillaier in a case against the Union Oil Company and Phyillaier's business partner, Mandella, concerning the rights of the parties to a Union Oil service station business and partnership

assets, which included a 1973 Seacamper boat. At the time the suit was filed, Phyillaier and Mandella were co-owners of the boat, which was registered in both their names. In March 1982, Phyillaier and Mandella stipulated to a judgment settling their respective rights. As part of the settlement, the Seacamper was to be transferred to Phyillaier.

In April 1982, after Mandella refused to comply with the terms of the settlement, and failed to transfer the Seacamper boat to Phyillaier, Phyillaier signed a retainer agreement at petitioner's request, changing the terms of petitioner's representation from an hourly fee basis to one on a contingent basis at 40 percent of all sums recovered. Soon thereafter,

Phyillaier executed a bill of sale to the Seacamper, transferring the boat to petitioner. Petitioner prepared both the bill of sale and the retainer agreement. He did not, however, inform Phyillaier that because the ownership of the Seacamper remained the subject of dispute, he should consult with independent counsel for advice on whether he should execute the retainer agreement and bill of sale to the boat.

In August 1982, petitioner transferred title of the Seacamper to a third party for valuable consideration. Petitioner then filed with the Department of Motor Vehicles an application for transfer of ownership and, in so doing, reported that he had lost the certificate of ownership covering the boat after receiving it

from Phyillaier. In fact, petitioner never had the certificate of ownership because Phyillaier never received it from Mandella.

The hearing panel determined petitioner violated his oath and duties as an attorney (6103), and violated rule 5-101 by requesting Phyillaier to sign a retainer agreement and bill of sale to the Seacamper without fully disclosing in writing the reasons for the transfer. Thus, the hearing panel concluded, petitioner acquired an adverse interest in Phyillaier's property without advising his client to seek the advice of independent counsel. (Rule 50191.)[4/]

4/ Although the notice to show cause did not specifically allege a violation of rule 5-101, such a violation was implied in the allegation that petitioner transferred title to the Seacamper while it was the subject of litigation involving Phyillaier. (See, e.g., Kelly v. State Bar (1988) 45 Cal.3d 649, 654, fn. 5.) In addition, petitioner failed to object to the additional charge during the course of the disciplinary hearings. Accordingly, we conclude that the failure to mention the violation of rule 5-101 in the notice to show cause did not prejudice petitioner's defense. (See, e.g., Natali v. State Bar (1988) 45 Cal.3d 456, 467.)

C. Mitigating and Aggravating Factors

The hearing panel found the following mitigating factors: (i) after petitioner was served with the notices to show cause, and during the hearings, he refunded money to several of his former clients ($500 to the Wetherfords, $3,236 to Haschemi and Miller, $2000 to Karen, and $3,800 to Phyillaier); (ii) during the State Bar hearings, petitioner wrote or sent mailgram apologies to Miller for the delay in sending money and to the Wetherfords for failing to keep them better informed of the status of their case); (iii) between 1979 and 1984, petitioner suffered from ulcerative colitis and was hospitalized for five days in 1979 (petitioner's illness caused him to lose weight and become irritable; he claims

he suffered debilitating effects from the medicine he took to control his illness); (iv) petitioner recently had been assisted in his practice by a personal injury attorney in good standing; (v) four character witnesses testified at the hearing to petitioner's honesty, veracity, trustworthiness, and conscientiousness; and (vi) petitioner had no prior record of discipline.

In aggravation, the hearing panel found petitioner lacked candor at the hearings, and did not cooperate with the State Bar in the investigation of charges against him. The referee observed that "with one of the State Bar witnesses, [petitioner] not only showed animosity but outright rudeness, hostility and accused him of mental derangement."

Finally, the hearing panel found that although petitioner expressed remorse for his mistakes, he lacked appreciation for the seriousness of his misconduct and the harm he caused his clients. As stated above, after considering all the relevant evidence, the panel recommended petitioner be disbarred, and the review department agreed unanimously.

II. DISCUSSION

Petitioner raises a number of objection to the State Bar's proceedings. As we explain, we are not convinced by petitioner's claims, and we believe the State Bar recommended the correct discipline under the facts.

A. Reasonable Right to Counsel

Petitioner makes several assertions regarding his reasonable

right to counsel under section 6065, subdivision (b). Specifically, he claims he was denied his due process right to a fair hearing because he was denied representation by appointed counsel. In this regard, petitioner asserts the State Bar erroneously vacated a 1985 order for appointment of counsel, improperly denied his request for appointed counsel on the 1986 notice to show cause, and erred in failing to notify petitioner of the criteria for determining indigence. Petitioner also contends the State Bar erroneously denied his motion for a continuance. We are not persuaded by petitioner's arguments. As we explain below, our review of the record discloses that petitioner had ample notice and opportunity to prepare for

the hearing and defend against the consolidated complaint, and we discern no likelihood that representation of petitioner by appointed counsel would have influenced, to petitioner's benefit, the findings and disciplinary recommendation of the hearing panel or the review department.

1. Procedures for Obtaining Counsel

The procedure in State Bar matters for obtaining counsel and determining indigence are informal, and not guided by published rules. (Dixon v. State Bar (1981) 39 Cal.3d 335, 342 [no abuse of discretion in review department's failure to appoint counsel when attorney unnecessarily delayed pursuit of counsel and failed to show entitlement].) State Bar proceedings are

generally regarded as quasi-criminal in nature, and a State Bar member is not entitled to traditional criminal procedural safeguards. (Slaten v. State Bar (1988) 46 Cal.3d 48, 57); Frazer v. State Bar (1987) 43 Cal.3d 564, 567; Yokozeki v. State Bar (1974) 11 Cal.3d 436, 447.) Finally, we have recognized that although a State Bar member is entitled to a "reasonable" opportunity and right to be represented by counsel under section 6085, it is the attorney's responsibility to obtain representation. (Slaten, supra, 46 Cal.3d 48, 57; see also Dixon, supra, 39 Cal.3d 335, 341-343.)

As the State Bar observes, the first notice to show cause in this matter was filed in February 1985. From February to May of that year, the State

Bar was apparently unsuccessful in its attempts to serve notice on petitioner. According to the State Bar examiner, attempts to serve petitioner by mail between March and May 1985 were unavailing. The record reveals that petitioner's failure to receive notice was due principally to his own failure to notify the State Bar of his correct and current address, as required by section 6002.1, subdivisions (a) and (b), and Rules of Procedure of the State Bar, rule 201. Petitioner eventually acknowledged personal service of the notice. The notice included an application for appointment of counsel upon a showing of indigency. Petitioner's answer and request for appointed counsel, filed in November, included a financial statement

indicating he was single and earned $42,000 per year. Petitioner listed a personal loan debt of $30,000, but did not reveal to who the debt was owed.[5/]

In January 1986, the State Bar served the second notice to show cause in the second matter.[6/] In June, on the day scheduled for the first mandatory settlement conference, the examiner and the appointed referee received mailed copies of petitioner's general denial of the allegations and his application for appointment of counsel. Petitioner's statement of indigence was based on the identical financial data filed in his 1985 request for appointment of counsel.

On failing to hear from petitioner whether he had found counsel to represent him in the proceedings concerning the 1985 notice to show

cause, and after concluding that petitioner was attempting to delay the proceedings, the State Bar examiner filed

5/ The record indicated that petitioner's 1985 motion for appointed counsel was granted over the phone by the State Bar clerk's office in November 1985. The record, however, does not contain a written order granting petitioner's request for counsel.

6/ Petitioner argues that the 1986 notice was not properly served. Our review of the record, however, indicates otherwise. On January 22, 1986, the notice to petitioner was mailed to three separate addresses, including a Louisiana address appearing in the State Bar's membership records as of December 1985. We find that the State Bar took reasonable and necessary steps to notify petitioner of all disciplinary activity. (Lydon v. State Bar (1988) 45 Cal.3d 1181, 1186; rule 243.)

a motion for hearing on the appointed counsel issue, indicating he would oppose appointment of counsel. In July 1986, after petitioner failed to file opposition to the examiner's motion, the examiner filed (i) a motion to vacate the order for appointed counsel in the 1985 matter, and (ii) opposition to the request for assigned counsel in the 1986 matter. The examiner's motion stated that petitioner had failed to show he was indigent and that a continued quest to seek pro bono counsel (and the resulting delay) not only would make it more difficult for the State Bar to locate witnesses, but also would result in undue hardship on three witnesses (Mr. and Mrs. Mandella and Phyillaier) who had filed Client Security Fund applications in connection with their

complaints against petitioner (see, post, p. _____ [typed opn. pp. 19-20]). The examiner's motion was granted.

The record discloses that petitioner had ample opportunity to prepare for the hearing on appointment of counsel. Moreover, it was reasonable for the State Bar to conclude that based on petitioner's financial statement and yearly income of over $42,000, he was not indigent. Indeed, the State Bar observes that petitioner had hired an attorney to represent him during hearing motions. When the State Bar contacted this attorney the week before petitioner's hearing, he he would be consulting with petitioner during the course of the hearing. Accordingly, even if we were to find the State Bar

erred in denying petition counsel, we perceive no prejudice in the State Bar's action. (Dixon, supra, 39 Cal.3d 335, 341-343.)

Finally, the hearing was held 11 months after the second notice to show cause was served on petitioner. Because petitioner delayed several months in locating counsel, and because he failed to make an adequate showing of indigence, we find the State Bar Court properly vacated the 1985 order for appointed counsel, and correctly denied petitioner's application for such counsel. (Ibid.)

2. Referee's Denial of Motion for Continuance

In November 1986, approximately two weeks before the disciplinary hearing was to begin in the consolidated

cases, petitioner sent a mailgram to the State Bar requesting a sixty-day continuance of the hearing. He asserted he needed the continuance to recover from unspecified surgery, and to give the State Bar Court time to reconsider his motions for appointment of counsel, and other motions (including a motion to dismiss the proceedings). The State Bar referee denied petitioner's continuance request.

Petitioner now claims, without citation of authority, that the denial of his motion for a continuance amounted to an abuse of discretion and a denial of due process. We disagree, and find petitioner has failed to demonstrate the requisite good cause required for a continuance. (State Bar Court Rules of Practice, former rule

F.3, now rule 1131(d) [continuance granted only on affirmative showing of good cause].) In addition, we find untenable his new assertion that his request for continuance was based on his lack of opportunity to examine the documentary exhibits. Petitioner neglects to reveal that he failed to appear at the December 1986 prehearing conference which would have afforded him an opportunity to review the exhibits. (See Bambic v. State Bar (1985) 40 Cal.3d 314, 319 [continuance properly denied after petitioner repeatedly failed to appear at hearings and failed to show good cause].)

B. Client Security Fund Matters

At the conclusion of the December 1986 disciplinary hearing, the referee ordered the Phyillaier Client

Security Fund (6140.5, hereafter CSF) matters (relating to the ownership of the Seacamper boat and the Phillaier-Mandella business partnership) off calendar without prejudice. Two of the applicants to the CSF (the Mandellas) were not present at the disciplinary hearing; the referee believed more time was needed to determine whether there were any "reimbursable losses" under the application. (6140.5) Petitioner now asserts he was denied due process because the referee should have dismissed the CSF matter with prejudice.

We find the referee's action to be a proper exercise of his discretion under the current rules. As we held in Saleeby v. State Bar (1985) 30 Cal.3d 547, 563-566, payments from CSF are made on a discretionary basis, and the

applicant has no entitlement to a specific amount. In order to comport with due process, however, the State Bar must allow an applicant an opportunity to be heard and to respond to the State Bar's proposed disposition of the request for funds. (Ibid.) Finally, although a formal hearing is not required, the State Bar has the option of either utilizing the disciplinary proceedings against the attorney as the forum for determining the amount available to the applicant, or providing a separate procedure for CSF dispositions. (Saleeby, supra, 39 Cal.3d at p. 566.) Accordingly, we find the referee exercised proper discretion in ordering the CSF matter off calendar without prejudice.

C. Evidence Supporting the Findings and Recommendation

Although petitioner admits that "his conduct justifies some imposition of discipline," he also claims that many of the findings and thus the recommendation of disbarment are not supported by evidence in the record. His various attacks on the findings, however, rely heavily on and repeat the evidence he presented to the hearing panel. In short, he asks us to credit his version of the facts over the contrary evidence presented by the State Bar. (Arden v. State Bar (1987) 43 Cal.3d 713, 724-725.)

After reviewing the record, we decline petitioner's invitation. "While the standard of review requires us to consider the evidence independently, we

assign great weight to the findings below when based on conflicting testimony. The members of the hearing panel were in a superior position to evaluate conflicting statements because they could observe the demeanor of the witnesses and the character of their testimony." (Arden, supra, 43 Cal.3d at pp. 724-725.) Moreover, the burden of showing insufficiency of the evidence to sustain the findings falls on petitioner. (Maltaman v. State Bar (1987) 43 Cal.3d 924, 957; Arden, supra, 43 Cal.3d at p. 724.) as we explain below, we conclude petitioner has failed to sustain his burden.

With respect to the Haschemi matter, petitioner claims that he "filed" the altered substitution of attorney and that it was in "absolute

accord with the wording of Mr. Haschemi." The evidence, however, contradicts petitioner's assertion that petitioner informed the court or Attorney Miller that he had written on the document he was continuing in his representation of Petru. Further, as noted above, petitioner failed to serve the document on Miller.

In addition, petitioner's contention that he owned Petru and was therefore allowed to continue his representation of the company is unconvincing. Indeed, petitioner's own testimony refutes his assertion. He state that Haschemi transferred stock from three Iranian corporations to three American corporations, and in turn, the stock in the three American corporations was transferred to Petru. The stock of

Petur was put in petitioner's name, after which he executed an irrevocable power of attorney in favor of Haschemi. Apparently, the only purpose of the stock transfer was to confer jurisdiction of the contemplated litigation on an American court. The retainer agreement did not grant petitioner an ownership interest in Petru, nor did petitioner ever produce the stock holding and legal services agreement mentioned in the power of attorney. In short, our review of the record reveals the Stare Bar's findings in the Haschemi matter were supported by convincing proof. (Arden, supra, 43 Cal.3d 713, 725.)

In the Ghasemloo, Archuleta, and Wetherford matters, petitioner admits that his deceptive actions

violated the Rules of Professional Conduct in each instance, but that he should not be penalized for his actions because he was unaware at the time that he was violating any rule. His assertion, however, is not supported by case law and we find no merit in his claim that ignorance of the Rules of Professional Conduct excuses their violation. (Gassman v. State Bar (1976) 18 Cal.3d 125, 131.)

D. Weight Afforded to Mitigating Factors

Petitioner next contends that the hearing panel did not consider properly his physical disability (ulcerative colitis) as a mitigating factor. He asserts his medical condition at the time the offenses occurred warrants less severe

discipline. We disagree.

In order to determine discipline that is consistent with the purpose of protecting the public from attorneys unfit to practice law (Arden, supra, 43 Cal.3d at p. 726), we must "balance all relevant factors including mitigating circumstances on a case-to-case basis." (Ibid.) Here, petitioner committed numerous wrongful acts in his professional capacity including: intentionally misleading a judicial officer, failing to communicate properly with clients about their cases, breaching fiduciary obligations to clients, and harassing a client for his own gain. Such egregious behavior constitutes serious misconduct warranting disbarment. (Maltaman v. State Bar, supra, 43 Cal.3d 924, 957

[dishonest acts in court are a basic violation of an attorney's oath and duties]; Rosenthal v. State Bar (1987) 43 Cal.3d 612, 615 [nondisclosure of conflict of interest, overcharging clients, failure to return files and harassment of former clients; lack of remorse]; Cooper v. State Bar (1987) 43 Cal.3d 1016, 1028 [failure to deliver property to client, breach of fiduciary

We do not find that petitioner's medical condition militates against disbarment. Although we sympathize with petitioner's ailment, he fails to convince us that the condition rendered him unable consistently to perform his duties as an attorney in conformance with the Rules of Professional Conduct.

In sum, petitioner's

dereliction of his duty to his clients, his intentional misleading of judicial officers and his failure to appreciate the seriousness of his numerous violations of attorney responsibilities, constitute blatant and serious violations of petitioner's oath and duties as an attorney. Thus, we find that disbarment is the appropriate discipline to protect the public, preserve confidence in the profession, and maintain the highest possible professional standards. (Jackson v. State Bar (1979) 23 Cal.3d 509, 514.)

III. CONCLUSION

We order petitioner Jonathan Bass Ainsworth be disbarred from the practice of law and that his name be stricken from the roll of attorneys. We further order that petitioner comply

with the requirements of rule 955 of the California Rules of court and that he perform the acts specified in subdivisions (a) and (c) of that rule within 30 and 40 days, respectively, after the effective date of this order. Our order is effective on finality of this opinion.

AINSWORTH v. STATE BAR

S004517

COUNSEL FOR PARTIES:

FOR PETITIONER:

Philip W. Bartenetti
Clark & Trevithick
800 Wilshire Blvd., 13th Floor
Los Angeles, CA 90017
(213) 629-5700

FOR RESPONDENT:

Office of General Counsel
State Bar of California
555 Franklin Street
San Francisco, CA 94102
(415) 561-8200

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QUESTIONS PRESENTED

The Supreme Court of California is running afoul of the United States Constitution, and even rejecting explicit United States Supreme Court precedents as they affect rights of all attorneys in State Bar proceedings throughout California! This is important because California sets an example that other states in the union have followed in the past. If this is allowed to continue, the United States Supreme Court can expect numerous additional petitions, because of the growing amount of constitutional violations in regard to the State of California's new attorney "discipline" procedure. This was the subject of a recent PBS documentary, discussed below in question No 3. pretrial publicity and political pressure in which the point was made that this is

the coming trend nationwide. In this sense these writ applications are "in aid of the United States Supreme Court's appeal jurisdiction" (See United States Supreme Court Rule 26 re writs.) Further problems can be "nipped in the bud"

"There are present exceptional circumstances warranting the exercise of the court's discretionary power," because this petitioner's livelihood and reputation are at stake, as well as that of numerous other attorneys. "Adequate relief cannot be had in any other form or from any other court" (United States Supreme Court Rule 26), because the California Supreme Court has already refused to act to cure the evils described herein. (See Appendix).

Because of a severe case load, the California Supreme Court has delegated complete control of State Bar proceedings

to the State Bar, which hires "Compensated Referees," who are actually on the State Bar's own payroll,(a flagrant conflict of interest which violates Wong Yang Sun v. McGrath, discussed below) to decide cases the State Bar's way, never mind explicit Constitutional rights and explicit United States Supreme Court precedents that get in the way. The California Court has little time other then to "rubber stamp" the erroneous findings of these paid referees, with only a cursory review of each case. Substantial Constitutional rights are ignored in the process, and attorneys so subjected are made to pay the price for a few nefarious attorneys who have raised the outcry because of extremely outrageous episodes of attorney misbehavior.

Political pressure from the State

Legislature, as well as from the "yellow journalism" that emitted from the San Francisco Examiner Newspaper, are responsible for this eroding of constitutional rights in California, which is happening at an alarming rate.

This case has enormous significance, not only to this petitioner and his family, who are suffering irreparable injury due to the damage to this petitioner's reputation, as well as to his livelihood, but also to all lawyers similarly situated, just as one man named Gideon had a case which applied far beyond the narrow confines of his own case. Gideon v. Wainwright, 372 U.S. 335 (1963) was just one of the United States Supreme Court precedents that was totally ignored. (Discussion follows.)

This petitioner and his family will suffer irreparable injury, unless this

Court acts, and for this reason this petitioner respectfully requests this Court's consideration, mindful of this Court's responsibilities to all of the people, including this petitioner.

Question No. 1:

EMPLOYMENT OF THE SINGLE JUDGE BY THE PROSECUTION VIOLATES DUE PROCESS AND UNITED STATES SUPREME COURT PRECEDENT.

The State Bar of California has effectively combined the dual roles of prosecutor and judge in the same office, since both are employed by and answer to the California Bar Association. This conflict of interest flies in the face of the spirit of Section 554(d) of the Administrative Procedures Act, which embodies the principles announced by the United States Supreme Court in Wong Yang Sun v. McGrath 339 U.S. 33, 41, 70 S.Ct.

445, 450.

Section 554(d) of the Administrative Procedures Act provides in pertinent part, that an administrative law judge may not:

> "be responsible to or subject to the supervision or direction of an employer or agent engaged in the performance of an investigative or prosecuting function for an agency."

The spirit of this section and Wong Yang Sun v. McGrath, were violated by the State Bar of California in this case.

As used by the State Bar, the term "Compensated Referee" is used to describe a one-sided, partial judge on the State Bar's own payroll, an employee of the State Bar, who is answerable to the State Bar and to no one else, who makes no pretext of objectivity, and who is paid by the State Bar of California to decide cases the way the State Bar wants them to

be decided, incredible as that may sound! In the present case, the State Bar actually employed a semi-retired, one-man "hearing panel" to convict Jonathan Ainsworth, in violation of the principle enunciated in Wong Yang Sun v. McGrath, ibid, which also stated that one of the purposes of the Administrative Procedures Act was:

> "to curtail and change the practice of embodying in one person or agency, the duties of prosecutor and judge."

The State Bar of California follows a procedure of actually paying the judges who decide their own cases, in this day and age. This overt conflict of interest is outrageous! It has even been criticized by a special report of the State Attorney General's Office in California.

All the more important, the rest of

the states in the union often look to California for guidance in developing new procedures. Because of this, this case is all the more significant.

The United States Supreme Court should play a role in safeguarding these and other constitutional rights, and not just be a spectator, as the California Court which is actually usurping the United States Supreme Court's power would like.

Question No. 2

ONE JUDGE WAS, USED EVEN THOUGH THE LAW SPECIFIED THREE JUDGES, IN VIOLATION OF DUE PROCESS, AS WELL AS EXPLICIT UNITED STATES SUPREME COURT PRECEDENT

The decision of the California Supreme Court shows that even it was under the misapprehension that there were three judges, as required by California

law, in the "Hearing Panel," which convicted this petitioner. (See Appendix, Page 42, in which the Supreme Court mistakenly refers to "members" - plural - of the hearing panel.) This finding was clearly erroneous. There was only one "member"-singular, despite this petitioner's overwhelming protests! (See two separate documents entitled "Opposition to Appointment of Compensated Referee" which were sent for filing to the State Bar Court on or about October 4 and 15, 1986.).

In the present case, Section 558 of the State Bar Court Rules provides for three judges, not one. This was totally ignored in the present case, in order to produce a summary conviction of this petitioner.

The United States Supreme Court has held several times that a writ of

mandamus may be issued to compel a court to require a three judge panel to be convened where such a panel is mandated by law! Ex Parte Northern Pacific Railway Company 280 U.S. 142. In that case, the per curiam opinion of the United States Supreme Court held:

> "Under our decision construing and applying the section, Judge Bourque sitting alone was without jurisdiction to hear either the motion to dissolve the temporary restraining order or the motion to dismiss the bill on the merits. Ex Parte Metropolitan Water Company of West Virginia 220 U.S. 539; Cumberland Telephone & Telegraph Company v. Louisiana Public Service Commission 260 U.S. 212, 216-217; Virginia Railway Company v. United States 272 U.S. 658, 671-673; Ex Parte Atlantic Coast Line R. Co. 279 U.S. 822."

In the present case, the State Bar was "without jurisdiction" to convict this petitioner, following the explicit reasoning of the United States Supreme Court in the above-mentioned cases. This

petitioner complained over and over again against the appointment of a single "Compensated Referee" to decide the case who, using the U.S. Supreme Court's phraseology, "was without jurisdiction... (See two Separate "Opposition(s) to Motion to Appointment of "Compensated Referee," which were sent for filing with the State Bar Court on or about October 4 and October 15, 1986.)

The State Bar of California rule which effects the composition of a three judge panel to decide State Bar cases is Rule 558. The rule in effect in the September, 1985 copy of the Rules of Procedure, mandated three judges, except in probation revocation hearings, in proceedings involving a law corporation or by stipulation (Rule 559).

Obviously, there was no stipulation regarding one judge, because this

petitioner had previously filed at least two documents opposing the appointment of a single, one-man "Compensated Referee". Even if the amended Rule 558, which appears in the February, 1987 copy of the Rules, had been in effect in 1986, the date of the hearing, still three judges were required pursuant to Rule 558(a)(3) which states that either the State Bar hearing examiner or the "member of the Bar (this petitioner) elects to have the matter heard by a panel of three referees" (emphasis added). Obviously, by opposing the appointment of a sole, one-man, "Compensated Referee", this petitioner requested a three judge panel.

The present case is also similar to the case Ex Parte Cogdell 342 U.S. 163, in which the United States Supreme Court once again granted a motion for leave to file a petition for a writ of mandamus,

where a request for three judges pursuant to statute had been denied by the lower court.

Compounding the constitutional violations in the present case, the one-man "hearing panel" was a crotchety, somewhat deaf and semi-retired lawyer on the State Bar's own payroll, who often could not be reached either at or by his own office.

The Court's indulgence is respectfully begged for a brief moment of its time, for the sake of reasonableness, for the sake of one man's career and livelihood, and for judicial precedent.

This petitioner respectfully requests that the order for disbarment be summarily reversed, pursuant to United States Supreme Court Rule 23.1, and that this petitioner be immediately reinstated as a member of the California Bar, in

good standing, and that this honorable Court would follow its own precedents of granting an immediate writ of mandate, to the lower court, as it did in both the Ex Parte Northern Pacific Railway case and in the Ex Parte Cogdell case, which are cited previously.

Question No. 3:

PRETRIAL PUBLICITY AND POLITICAL PRESSURE, IN VIOLATION OF UNITED STATES SUPREME COURT PRECEDENT

The San Francisco Examiner, a Hearst publication, has been credited by some historians with engendering an atmosphere, along with other Hearst publications, which actually started the Spanish-American War at the beginning of the present century. This newspaper has been up to its old tricks in California of practicing "yellow journalism". WETA

Television from Washington, D,C., a PBS affiliate, documented in a nationally televised program, both the pretrial publicity as well as the political pressure (actually these are two separate Constitutional violations, though they appear as a single question), that were brought to bear on the California Bar Association and its "Compensated Referee".

1) Pre-trial publicity is relevant in regard to the right to a fair trial, as this Court has previously held in Rideau v. Louisiana 373 U.S. 723, and in Chandler v. Florida 449 U.S. 560.

2) Also, several Federal courts have held that Legislative "prodding" may require reversal of an agency's wrongful action. District of Columbia Federation of Civic Association v. Volpe 459 F 2d 1231 (D.C. Cir 1973, cert denied) Eastern

Airlines, Inc. v CAB 271 F 2nd 752 2nd Cir 1959) Pillsbury, Co. v FTC 354 F 2nd 952 (5th Cir 1966) Sierra Club v Castle 657 F 2nd 298 (DC Cir 1988).

According to the PBS documentary, enormous pressure was put on the State Bar of California to obtain convictions by the San Francisco Examiner newspaper, and by the California State Legislature, prior to Jonathan Ainsworth's trial. A transcript from the WETA Washington, D.C. station, which produced the documentary, proves that near hysteria reigned in the California Bar Association at that time:

"Narrator ... The catalyst was a stinging series on lawyer discipline published in March of 1985 by the San Francisco Examiner..." (WETA Transcript at pp 13,14)

"Kelly, the only reason the bar ever brought him (referring to another lawyer) to justice at all was because they were personally humiliated by having the San Francisco Examiner use him as the worst example of a shyster that the Bar had never done anything about..." (See WETA Documentary Transcript at p. 14, Emphasis added)

"Narrator: The public outcry was heard in Sacramento, the state capital, where Senator Robert Presley formed a task force to make recommendations on improving California's political system..."

"Narrator: The State Bar Association saw trouble brewing, and put into effect some reforms of its own. The secrecy has been reduced, penalties stiffened and the investigation staff beefed up. Former State Bar President David Holpern:

"Holpern: The system is a lot stricter, and we mean business." (See WETA TV Transcript at page 14, Emphasis added)

In the climate of hysteria that existed at the California Bar, particularly in the San Francisco office where this petitioner was tried and summarily convicted without due process or other constitutional rights guaranteed to him, clients began filing claims against lawyers right and left. Some unscrupulous lawyers even began filing claims against other lawyers as extra-judicial trial tactics in civil litigation, as in the present case, which

will be shown below. Indeed, most of the charges that were brought against this petitioner were brought by other competing attorneys, in an effort to accomplish legally improper collateral advantages that they could not attain in private adversarial-type lawsuits. Political careers were advanced in the California Legislature by attacking lawyers as well.

Question 4:

NEW EVIDENCE OF PERJURY WAS RECENTLY REJECTED BY THE CALIFORNIA STATE SUPREME COURT, DESPITE THE FACT THAT THE NINTH CIRCUIT COURT OF APPEALS' FACTUAL and LEGAL DETERMINATION IS DIRECTLY CONTRARY TO THE CALIFORNIA STATE SUPREME COURT'S DECISION.

a) There were numerous examples of perjury that were committed at trial. The United States Supreme Court has reviewed factual determinations when the results are shockingly wrong and thus present substantial due process questions! Thompson v. City of Louisville 362 U.S. 199 (1960), and convictions may be reversed where "they were so totally devoid off evidentiary support as to render them unconstitutional under the Due Process Clause of the Fourteenth Amendment." Garner v. Louisiana 368 U.S.

157,163 (1961).[1]

United States Supreme Court Rules pertaining to certiorari writs, Rule 17.1(b) states that this Court will consider an obvious conflict between a federal court of appeals decision and that of a State Supreme Court, which fails to acknowledge it:

"When a state court of last resort has decided a federal question in a way to conflict with the decision of another state court of last resort or of a federal court of appeals." (Emphasis added).

This was found in the most recently discovered perjury, which was committed by the State Bar's star witness, one

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1. Ordinarily a finding of fact is not reviewable; however, this Court can and does review a State Court's findings "where a federal right has been denied as the result of a finding shown by the record to be without sufficient evidence to support it" Fisk v. Kansas 274 U.S. 380, 385-386 and see Creswill v. Knights of Pythias 225 U.S. 246, 261 (1912), as well as Sterling v. Conseantin 287 U.S. 378, 398 (1932).

Stephen Miller, himself an attorney currently licensed to practice law in California, who should be disciplined himself.

In the present case, the decision by the Supreme Court of California, which erroneously disbarred this petitioner, is inconsistent with that of the United States Court of Appeals for the Ninth Circuit, which also sits in San Francisco. The California Supreme Court's decision, which is contradicted by the decisions of the U.S. District Court and the Ninth Circuit Court of Appeals, was based on perjury which the State Bar's Hearing Examiner readily accepted, "hook, line and sinker," despite obvious proof to the contrary.[2]

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2. Findings regarding a claim that activity involved a federally guaranteed constitutional right are reviewable Niemotho v. Maryland 340 U.S. 268, 271, Edwards v. South Carolina 372 U. S. 229,

(Please see Tchacosh v. Rockwell 766 F 2d 333, 1339, which contradicts the State Bar's and the California Supreme Court's erroneous findings, and which is discussed below.)

Perjury, as defined in Black's Law Dictionary is:

> "The willful assertion as to a matter of fact, opinion, belief or knowledge, made by a witness in a judicial proceeding as part of his evidence ... such assertion being material to the issue or point of inquiry and known to such witness to be false."

"Cases may be reopened when this occurs Peacock Records v. Checker Records 365 F 2d 1451, and the burden is on the respondent (in the present case, the State Bar of California) to show that it did not affect the outcome of the case Hazel Atlas Glass v. Hartford 322 U.S.

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235 (1963), Cox v. Louisiana 379 U.S. 536, 545n 8 (1965). This is discussed below.

328.

This petitioner is aware that this Court has many, many, far more earth-shaking cases to decide in its busy and important schedule. Other issues are far more earth-shaking then this petitioner's entire career and his family and loved one's well-being; however, there has been a terrible injustice committed by numerous instances of perjury in California. One instance stands out in particular:

The State Bar of California's star witness against this petitioner is the principle perjuring party, himself a member of the State Bar of California, who lost Tchacosh v. Rockwell, 766 F 2d 1333, 1339, a multi-million dollar lawsuit on behalf of his client, an Iranian national, Hassan Haschemi, and then sought to cover his own legal

malpractice and ethical derelictions by instead blaming this petitioner, who prior to the complaining witness' testimony had previously represented that same Iranian national. The Iranian individual had never complained to the State Bar of California concerning this petitioner, as far as this petitioner knows.

Before casting this petition aside because of time constraints and an unworkable case load, please consider this:

The United States District Court in Los Angeles as well as the United States Court of Appeals for the Ninth Circuit in San Francisco, have both in effect called the Iranian national an impostor! This "fact" was willfully concealed by attorney Stephen Miller when he testified, who instead stated his

"opinion". Attorney Miller falsely testified that the real reason he, who was actually the complaining witness, himself, lost his client's lawsuit, was because, according to him, Judge Takasugi of the U.S. District Court got so mad at this petitioner that he decided to throw the case out. This scandalous statement, this undoubtedly slanderous statement against both Judge Takasugi of the United States District Court and against this petitioner, was actually believed by the State Bar's own "Compensated Referee" who decided the case.

Attorney Stephen Miller deliberately perjured himself when he testified under oath at the State Bar hearing:

> "It is my opinion that the activities and the conduct of Mr. Ainsworth had a very detrimental impact upon Mr. Haschemi for the reason that I think very simply that Judge Takasugi, who is generally a very patient judge, lost his patience in this case and

quite frankly, wanted to get rid of the case." (Reporter's Transcript, Volume II, page 67, lines 14-19)

This preposterous statement, itself grounds for discipline against Judge Takasugi if it were true (and it isn't), as well as numerous other perjured statements, which were made by attorney Stephen Miller, have been allowed to stand because the California State Supreme Court is, by its own account, too busy with capital punishment cases and attorney discipline cases to do an in depth study of the latter (admittedly less important than a person's life, but still too important to let outright perjury of this sort stand).

To begin with, the real reason attorney Stephen Miller lost his client's case, which he refused to tell the court in the Ainsworth matter, was because his client had previously been legally

divested of his legal authority to bring any lawsuit whatsoever, by his own government, the Islamic Republic of Iran, which fact was acceded to by the United States courts because of the Act of State Doctrine, which in effect gives "full faith and credit" to the acts of other sovereign states, while acting within their own jurisdictions. The findings of the United States Federal courts that the same Iranian had no legal authority to sue on behalf of Tchacosh would of course likewise make it legally impossible for either Hassan Haschemi or his attorney, Stephen Miller, to bring a complaint, on behalf of a company which neither legally control, against this petitioner. The United States Federal courts have found:

"The Iranian decrees divesting Haschemi of authority on behalf of Tchacosh will be given effect."

"Accordingly the District Court's grant of Summary Judgment in favor of Rockwell is affirmed." See Tchacosh v

Rockwell 766 F 2d 1333, 1339.

These true facts were deliberately withheld from the one-man hearing panel by the State Bar's star witness, who deliberately perjured himself! It was also withheld by the State Bar in the Ainsworth case. (Ainsworth was unaware of the conclusion of the case at the time.)

The above decision was completely ignored by the one-man hearing panel that convicted this petitioner. This petitioner claimed to own and proved that he, Jonathan Ainsworth, personally owned the holding company, Petru International Corporation, an American corporation that in fact owned Tchacosh Company, Inc., also an American corporation.[3]

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3. Finding as to a waiver of a federally guaranteed constitutional right are reviewable Brookhart v. Janis 384 U.S. 1,4n4 (1966). In the present case, this petitioner's ownership of Petru International Corporation, a property right which cannot be taken without due

The erroneous decision of the one-man "Hearing Panel" was erroneously upheld by the California State Supreme Court, which because of Stephen Miller's deception, at the time was unaware of the true facts of ownership, as decided by the United States District Court in Los Angeles and upheld by the Ninth Circuit Court of Appeals in San Francisco. (See Tchacosh v Rockwell 766 F 2d 1333, 1339.) This petitioner was likewise unaware of the decisions by both Federal courts in California at the time, because of the deliberate perjury of attorney Stephen

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process, as well as this petitioner's right to practice law, to receive compensation, to earn a livelihood, etc. are also at stake, and are protected by the United States Constitution as to contract rights as well as to property rights, to name a few of this petitioner's constitutional rights in this regard. (Further discussion follows)

Miller, who had lost both cases, but later perjured himself in this regard at the State Bar's hearing. (More later.)

The prosecution's star witness, himself an attorney and sworn to tell the truth, actually perjured himself, aided by the State Bar's own prosecution, which refused to divulge the complaining witness' original complaint. Attorney Miller willfully, deliberately, and maliciously, testified at the State Bar disciplinary hearing in 1986 as stated above.

The prosecution's star witness against this petitioner was completely undaunted by the true facts which had already been determined in a court of law and upheld by the United States Court of Appeals. The true facts of control were totally ignored by this perjuring witness.

The true facts would perhaps have come out at an earlier date; however, the State Bar refused and continues to refuse to produce the alleged complaint that was ostensibly filed with the State Bar by Stephen Miller. Had this been revealed at the trial, the true facts of attorney Stephen Miller's outright perjury would have been discovered, since he stated as facts, which the State Bar Referee incorporated into his decision, untrue allegations which were exactly opposite the true facts as decided by and upheld by the Federal Courts in California.[4]

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4. Erroneous findings of a State Supreme Court that involve question of federally guaranteed rights (here the taking of property without due process, as well as other constitutional rights), as prohibited by the United States Constitution, or that conflict with a Federal Court of Appeals Decision, are reviewable by the U.S. Supreme Court (See Thompson v. City of Louisville 362 U.S. 199 (1960) and Garner v Louisiana, 368 U.S. 157, 163 (1961).

It was because of the severe physical disabilities which were experienced by this petitioner immediately prior to trial of this matter, that he was unable to represent himself properly. (See below discussion.) Because this petitioner was also fraudulently induced by an unscrupulous State Bar prosecutor who sought to and deliberately convinced this petitioner that most of the complaining witnesses had actually dismissed their complaints, this petitioner was caused to be unprepared to cross-examine witnesses and unprepare to present an adequate defense. (Please see below discussion.)

Because the State Bar of California was under extreme pressure by the California Legislature and by the San Francisco Examiner to obtain convictions at any cost, this caused this petitioner

to be denied his requests for a continuance to recover from surgery, (14 days prior to trial), to obtain counsel to represent him and to be able to read the exhibits that caused this petitioner to be disbarred in California, without due process and in total and complete disregard for the true facts. (See below discussion.)

Since the hearing judge used erroneous information (i.e. deliberately perjured statements) in passing sentence, constitutional due process rights were violated, as well as United States Supreme Court precedent.

Another United States Supreme Court case that was reversed because the trial judge had used erroneous information when passing sentence was Townsend v. Burke 334 U.S. 736. The sentence was voided. This court is hereby urged to do the

same, in summary fashion, in light of at least five other instances of deliberate perjury that will be shown in these papers, as well as the other erroneous information that is documented herein.

b) Yet another abuse in the present case, erroneous information concerning Jonathan Ainsworth's **medical condition** was deliberately presented by the State Bar's Prosecutor, who actually gave his own testimony, himself. This erroneous testimony was once again swallowed by the State Bar's own hired Referee, "hook, line and sinker." The State Bar's Prosecutor, Jerome Fishkin, actually testified, on his own, that Jonathan Ainsworth's **medical condition** was allegedly not that serious, despite overwhelming evidence to the contrary (See Below.) (See also Transcript Vol. 9, p. 21 lines 20-25, page 22 lines 1-10.)

The State Bar Prosecutor's conduct is specifically forbidden by Hawk v. Superior Court 42 Cal App 3d 108(1974) and by California Rule of Professional Conduct 7-105(1) which prohibit deliberately misleading a judge by a false statement of fact. Unfortunately the State Bar's "Compensated Referee" apparently believed the State Bar's Hearing Examiner, who in effect gave his own testimony regarding Ainsworth's alleged medical condition. Jonathan Ainsworth's medical evidence was never rebutted by any credible evidence whatsoever, even though the State Bar Prosecutor actually promised he would have a doctor testify to say that Jonathan Ainsworth's medical condition was not that serious. When the Prosecutor couldn't make any doctor

commit perjury by so testifying, he decided to testify himself!

This is highly relevant and highly prejudicial, since medical condition is considered a "mitigating factor" in California State Bar hearings. (Please see the California Court's decision at pages 25 and 26 of the Appendix). In other words, even if the prosecution proves all the elements of the alleged offenses, the lawyer on trial may still be acquitted, if it is shown that he has an adequate excuse or justification Leland v. Oregon 343 U.S. 790, a United States Supreme Court case.

Also, the accused is presumed innocent of all charges and the "totality of the circumstances" must be considered Kentucky v. Whorton 441 U.S. 786, yet another United States Supreme Court case which was totally disregarded.

One medical doctor, Dr. Becker, this petitioner's expert, did testify that Jonathan Ainsworth had a very serious medical problem during the time of the alleged instances, i.e. regarding the Haschemi and Ghasemloo matters (see Exhibit AAA p. 14), as well as during the Mayes-Ulricksen and Phyillaier matters (see Exhibits III and JJJ) that caused this petitioner to lose great amounts of bodyweight (25 to 40 lbs., on two separate occasions), and that it was accompanied by profuse bleeding that "erupted like a volcano," in Dr. Becker's words. The State Bar's one-man "Compensated Referee" once again failed to consider the "totality of the circumstances," as required by the United States Supreme Court in Kentucky v. Whorton, above.

Testimony by Dr. Tuckman was not even

allowed regarding the extreme effect this petitioner's prescription medicine, including large doses of predinisone, azulfudine and other prescribed drugs, had on this petitioner's medical condition, up to and including the times of various charges. (Health problems sometimes effected this petitioner's ability to work, though not his ethics; and matters that concern "malice" as the term was used by the State Bar's "Compensated Referee" are reviewable. See New York Times v. Sullivan 376 U.S. 254, 285 (1964)).

The refusal to admit further medical evidence was prejudicial and denied this petitioner a fair trial. A Request For a Hearing De Novo to allow such testimony was denied by the Hearing Referee despite the declaration of Dr. Leo Tuckman, M.D., which adequately documented a serious

medical condition, as well as the effect on petitioner of prescribed drugs which were needed to stop or even attempt to control petitioner's enormous blood and bodyweight loss. See Lind v. Schenley Industries, Inc. 278 F 2d 79, cert. denied 364 U.S. 835.

Question No. 5

NEW CHARGES WERE ADDED AT TRIAL IN THE HASCHEMI, GHASEMLOO AND PHYILLAIER MATTERS, IN VIOLATION OF THIS PETITIONER'S SIXTH AMENDMENT RIGHT "TO BE INFORMED OF THE NATURE OF THE CAUSE AGAINST HIM," AND IN VIOLATION OF UNITED STATES SUPREME COURT PRECEDENT.

The following matters violated this petitioner's Sixth Amendment constitutional right "to be informed of the nature and the cause against him". The process of actually adding new

charges at the trial itself, or actually changing the old charges at trial, has been specifically outlawed by the United States Supreme Court in In Re Ruffalo 390 U.S. 644, 885 S. Ct. 122 and in Cole v. Arkansas 333 U.S. 196, 201.

In both the Stephen Miller (Hassan Haschemi) and Ghasemloo counts (discussed below), new charges appear in the findings that were not in the pleadings, since the original charges actually refer to acts committed against this petitioner's own **American** corporations, but the findings erroneously relate to Iranian companies with similar names. (The State Bar's "Compensated Referee" never understood the difference between this petitioner's American corporations, which this petitioner, an American, owned, and the Iranian companies which Hassan Haschemi, an Iranian, at one time

formerly controlled, before he was divested of his legal authority, as discussed previously.)

The changing of charges at trial is unconscionable, regardless of whoever owned or controlled these business entities! (Please see Transcript Vol. II p. 7 lines 6-25, p. 81 lines 1-6, page 137 lines 15-20; Vol. III p. 69; Vol. V p. 68 lines 18-25, p. 69 lines 1-11; Vol. VI, p. 68 lines 18-25, page 69 lines 1-11.) Exhibit KKK shows copies of corporation documents, American corporations that were owned by this petitioner, an American. These are further proof that the State Bar and its Hearing Referee never really understood the true facts of ownership, nor were they aware of the facts as decided by the Federal courts in Tchacosh v Rockwell, 766 F 2d 1333, 1339.

The changing of of charges was also done in the Phyillaier count (See below discussion.)

Question No. 6:

PETITIONER WAS FRAUDULENTLY INDUCED NOT TO CONTEST MOST OF THE CHARGES BY A FALSE PROMISE OF SETTLEMENT, IN VIOLATION OF UNITED STATES SUPREME COURT PRECEDENT, THUS DENYING THE CONSTITUTIONAL RIGHT TO DUE PROCESS THEREBY.

United States v. Throckmorton 98 U.S. 61; as well as Kulcher v. Kulcher 1 Cal 3d 467 both state that a judgment can be overturned when it resulted from a false promise of settlement. A judgment may also be reopened for fraud or other misconduct. Peacock Records, Inc., v. Checker Records 365 F 2d 1451. The responding party has the burden to show that the fraud did not affect the outcome

of the case Hazel Atlas Glass Co. v. Hartford 322 U.S. 328. Most of these are United States Supreme Court cases, which the California State Supreme Court refused to even consider, in both of its two erroneous decisions, making the California court a law unto itself.

This petitioner, Jonathan Ainsworth, was actually informed by the following prosecution-coached witnesses that the following matters had been resolved and dismissed, preposterous as that might seem! This petitioner was fraudulently induced by false promises by the State Bar Hearing Examiner, acting through his coached witnesses, who he even admitted consulting about this, that the following matters had been resolved and dismissed by the prosecution-coached witnesses, who actually signed written statements at the specific direction of the State Bar

Prosecutor, that the following claims had been dismissed!

- Phyillaier (See Exhibit CC)
- Wetherford (See Exhibit B)
- Archuletta (See Exhibits F,G)
- Mayes (See Exhibit FF)

The State Bar Prosecutor actually **advised** and **counseled** the above complaining witnesses to sign written statements, whereby they actually stated that they had dismissed their claims, with full knowledge of the State Bar Prosecutor that Jonathan Ainsworth would rely on said statements (hardly due process), and knowing therefore that Jonathan Ainsworth would **not prepare a defense**! This deliberate trick by the State Bar was uncommented on by the State Bar Hearing Referee, (who was paid by the State Bar), a clear abuse. The biased judge should have dismissed these counts

in full, in keeping with the signed representations that the charges had been dismissed, on estoppel grounds alone, to say nothing of fraud and the other extreme ethical violations by the State Bar Prosecutor!

This abuse clearly constituted plain error. The State Bar Prosecutor knew that this was intended to resolve the matters and that this petitioner would rely on it. (See Vol. 1, p. 61-68, p. 124-126, p. 253, lines 3-14).

Question No. 7:

CERTAIN CHARGES WERE EVEN BROUGHT BEYOND THE TIME OF THE APPLICABLE STATUTE OF LIMITATIONS BY THE STATE BAR, VIOLATING PROCEDURAL DUE PROCESS AND VIOLATING UNITED STATES SUPREME COURT PRECEDENT.

In 1986, the same year as the State

Bar hearing against this petitioner, the United States Supreme Court decided Schiavone v. Fortune 477 U.S. 21, which reaffirmed the validity of Statutes of Limitations.

The Statute of Limitations for attorney malpractice in California is two years, yet the State Bar's Hearing Referee even allowed the major charges to proceed, even though they were brought well beyond the time limits of the various statutes:

The Haschemi and Ghasemloo counts were filled 4 to 6 years after the alleged offenses (See Transcript for objections Vol II, p. 3 ll 11-25, p. 4 ll 1-21.)

The Mayes-Ulricksen and Phyillaier counts were filed 4 years after the alleged offenses (See Transcript for objections Vol I, p. 200 line 25 to p 201

11 1-4)

Charges that alleged N.S.F. checks and alleged practicing law without a license because of late payment of State Bar dues, were also brought from three to five years after the time of the alleged occurrences. (See discussions below.)

Question No. 8:

THE FAILURE AND REFUSAL OF CERTAIN SO-CALLED "COMPLAINING WITNESSES" TO TESTIFY AT TRIAL VIOLATED THE SIXTH AMENDMENT RIGHT TO CONFRONT WITNESSES AND UNITED STATES SUPREME COURT PRECEDENT.

The right to confront witnesses, as guaranteed by the Sixth Amendment of the United States Constitution, is fundamental Pointer v. Texas 380 U.S. 400. The prosecution has the burden of showing that a witness is unavailable if

he or she does not appear to testify. A good faith effort must be made by the prosecution to bring the witness to trial Ohio v. Roberts 448 U.S. 56, yet in the present case, the State Bar of California made no showing whatsoever why the following so-called "complaining witnesses" refused to appear, and actually refused to testify, in violation of this petitioner's constitutional rights:

1. Hassan Haschemi (See Transcript Vol. 1, p. 3, lines 22-25; p. 4, lines 1-21; p. 72, lines 17-19; p. 74, line 4.)
2. Rebecca Archuletta (See Exhibits F and G by which Rebecca Archuletta also dismissed her claims.)
3. The attorney for the County of Santa Clara

The charges which were not even brought by Hassan Haschemi, and by Rebecca Archuletta as she said in exhibits G and FFF. They were actually

brought by their attorneys and **should have been dismissed**, because the so-called "complaining witness" did not appear and did not testify at all. This violated this petitioner's constitutional rights to confront and to cross-examine the alleged witnesses against him.

By these acts, the California State Bar clearly and obviously violated the **Confrontation and Cross-Examination Clauses** of the Sixth Amendment of the United States Constitution, See California v. Green 399 U.S. 149, Ohio v. Roberts 448 U.S. 56, Dutton v. Evans 400 U.S. 74, all United States Supreme Court cases, which the California Supreme Court once again ignored in its haste to convict this petitioner.

This petitioner was even denied his right to subpoena Archuletta and Haschemi to testify when they they did not show up

at trial, a violation of petitioner's right "to compulsory process for obtaining witnesses in his favor." Had petitioner been allowed to subpoena these individuals, would have shown that it was their irate land attorneys who in reality complained![5]

Unhindered by notions of a fair trial with due process, as well as other Constitutional rights, the State Bar of California continued to conduct its trial by surmisal, hearsay and conjecture, such as it should not even be categorized as circumstantial evidence or even evidence at all. The Judgment of Disbarment should be summarily reversed pursuant to

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5. An Attorney (in this present case, the State Bar's Prosecutor) is not permitted to suggest what a witness might have testified to Jacobson v. National Dairy Products 176 N.E. 2d 551 (Ill. 1961), yet this is what happened in both of these counts. Trial was by surmisal and conjecture.

United States Supreme Court Rule 23.1, because this petitioner was summarily tried without due process and without his other constitutional rights, as enumerated herein.

Question No. 9:

THE STATE OF CALIFORNIA, THROUGH ITS STATE BAR ASSOCIATION, ACTUALLY "IMPAIRED" THE OBLIGATION OF CONTRACTS BETWEEN THIS PETITIONER AND FORMER CLIENTS, DESPITE THE PROHIBITION OF ARTICLE 1 SECTION 10 OF THE UNITED STATES CONSTITUTION, SINCE IT SUBSTANTIALLY "INVALIDATED, RELEASED, AND EXTINGUISHED THE OBLIGATIONS OF A CONTRACT" BETWEEN PETITIONER AND FORMER CLIENTS, AND "DEROGATED SUBSTANTIAL CONTRACTUAL RIGHTS" BETWEEN THEM, IN VIOLATION OF THE CONTRACT CLAUSE AND UNITED STATES SUPREME COURT PRECEDENT

Fletcher v. Peck 10 U.S. (6 Cranch) 87 (1810) is the leading constitutional case which describes the right of people not to have state(s) "impair" the rights of contract as found in Article 1 Section 10 of the United States Constitution.

Home Building and Loan Association v. Beaisdell 290 U.S. 398 states the test for determining this type of constitutional violation.

In invalidating the above-mentioned contracts between Jonathan Ainsworth Wetherford, Archuletta, and Phyillaier, his former clients, by which the former clients actually dismissed their complaints against this petitioner (and said so in writing), then proceeded against this petitioner in the State Bar proceedings anyway, after the State Bar Prosecutor actually counseled them to do so, the State Bar of California

substantially invalidated, released, extinguished, and derogated the contractual obligations of the parties, according to the test which the United States Supreme Court announced in the Home Building and Loan case, above, which case the California Supreme Court continues to ignore, despite its effect as a United States Supreme Court precedent.

The contracts which California invalidated, had amounted to a full and complete resolution of the disputed contentions, without admitting liability. Any state law which purports to allow this obvious interference with contracts is void. In short, the witnesses dismissed their complaints in writing, but were simply made to proceed anyway by the California State Bar Prosecutor.

In considering whether or not these

violations were merely "modifications" and not "impairments" of contracts, the United States Supreme Court has stated that the following criteria are to be considered:

a) the severity of the impairment, and

b) the reasonable reliance and expectations of the contracting parties, among other factors, (Allied Structural Steel Co. v. Spannous 438 U.S. 234, Emphasis added)

The effect of the State Bar actually cancelling the written agreements to dismiss the above-mentioned counts, after deliberately advising and counseling the above-mentioned witnesses to actually sign written statements that the charges were dismissed, coupled with the "reasonable reliance" by the parties that the alleged charges were dismissed, in

after written notices were received that the above mentioned counts had been dismissed, amounted to an **estoppel**. The State Bar should have been estopped from claiming that the charges were not in fact dismissed, yet it is the State Bar, acting through its overly aggressive, Gestapo-like Prosecutor, and an acquiescent, semi-senile and partially deaf, paid "Compensated Referee," that committed these egregious constitutional violations!

Question No. 10:

NUMEROUS ADDITIONAL EXAMPLES OF DENIAL OF DUE PROCESS AND VIOLATION OF OTHER CONSTITUTIONAL RIGHTS AS WELL

Some of the more egregious examples of denial of constitutional rights that were the direct result of the pretrial publicity and political pressure included:[6]

a. A continuance was denied despite the recent exploratory surgery of petitioner for cancer, which occurred approximately 14 days prior to trial of the State Bar matter. This petitioner was still recovering, yet the "Compensated Referee" refused to grant any continuance whatsoever, despite medical evidence. (See Exhibits AAA, BBB, III, JJJ, PPP as well as Motions for a Continuance.)

Both the "Compensated Referee" as

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6. Attorney's right to procedural due process In Re Ruffalo 390 U.S. 644, 885 S.Ct.122 is the United States Supreme Court case which says attorneys are entitled to due process in Bar Association proceedings. See also Cole v. Arkansas 333 U.S. 196, 201; California Business and Professions Code Section 6085; Giddens v State Bar 28 Cal 3d 730 (1980)

well as the State Bar's Prosecutor denied this petitioner a continuance in order to take advantage of this petitioner's medical condition, in an effort to coerce phony confessions from him because of the excruciating pain this petitioner was then in, due to the then recent surgery, as well as his then current need for additional surgery. All of this properly documented at trial by these as well as other exhibits. Coppock v State Bar 44 Cal 3d 665, 244 Cal Rptr 462 and Walter v State Bar 2 Cal 3d 880, 87 Cal Rptr 833, both show that a continuance should have been given in order to allow this petitioner time to examine the

documentary exhibits and to recover from the effects of his then recent surgery. This was not done (See Transcript Vol 1, p. 18, l 19).

b. Subjecting petitioner to marathon cross-examination immediately following his exploratory surgery for cancer,without allowing him to review the documents, while in excruciating pain and in need of additional hernia surgery which made carrying his own exhibits to court extremely difficult, denied this petitioner a fair hearing.(See Transcript Vol I, p.6, Vol IX, p. 13, line 22, Vol. VI, p. 58, lines 22-24, as well as medical records).

c. This petitioner was effectively denied the right of

cross-examination, due to his inability to read the numerous exhibits during trial because of health problems, lack of adequate notice, being told in writing that most of the matters had been dismissed by the complaining witnesses, etc. Slaten v. State Bar (July 28, 1988 S 32323) (See Transcript Vol II, pp. 181-190).

d. Petitioner repeatedly objected to the entire proceeding (Please see Transcript Vol 1, pp. 3, 6, 8, 9, 105; Vol III, p. 61; Vol V, p. 131; Vol VI , pp. 46, 55.) Still continuances were sternly refused!

e. Numerous insults were made by the State Bar's Referee and Prosecutor, both on as well as off the record. Fundamental

fairness required a continuance (State Bar Court Rules of practice 1131 (d), former rule F.3)

f. The "Compensated Referee", actually ridiculed this petitioner because of his poor health! (See Transcript Vol. I, p. 257 lines 22-25, p. 258 lines 23-24, p. 295 lines 1-11.)

g. The "Compensated Referee" even berated this petitioner when he asked for time to review documents (See Transcript Vol. II, p. 143 lines 16-21).

h. This petitioner was so sick during the State Bar hearing he even fell asleep during the hearing itself, because he had been averaging only two hours of sleep per night, due to trial

preparation and his then existing physical disabilities. (See Transcript Vol. IV, p. 171 lines 5-8). This amounted to torture -- hardly due process in America! (See Transcript Vol. IV, p. 170 lines 1-11).

i. The "Compensated Referee" even refused to allow the introduction of evidence by this petitioner, (See Transcript Vol IX, p. 10, 11 1-17), and even stopped the hearing before this petitioner could finish testifying (See Transcript Vol IX, p. 118).

j. The State Bar actually took away this petitioner's court-ordered attorney (previously ordered pursuant to the decision in Gideon v Wainwright 372 U.S. 335 (1963).) This right to an

attorney, who had been ordered appointed, was summarily taken away with six days notice and no opportunity to contest this, even though California law mandated fifteen days notice for such served by mail motions. The motion was even granted before this petitioner had a chance to reply. (A fact omitted by the California Court and by the State Bar's "Compensated Referee" in their highly selective opinions.)[7]

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7. In an attempt to justify this as an after-the-fact rationalization, the Court cleverly re-examined the application for appointment of counsel, after it had been granted, then summarily taken away. In the court's convoluted reasoning, the Court cleverly substituted the amount of gross income, before office expense and overhead, instead of the true amount of net income, in an attempt to make it appear that this petitioner could afford a lawyer at the time. With only 6 days notice, including mailing time, this

k. This petitioner even traveled 3,500 miles to and from the California Supreme Court hearing in San Francisco, only to be told that he would not be allowed to speak to the Court at the hearing.

l. The California Court should also have properly considered the effect of prescription drugs on this petitioner, as well as his documented medical condition of ulcerative colitus. (See previous discussion above.)

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petitioner could not respond in time before the motion to vacate the order appointing counsel was granted. Petitioner's condition had been caused largely by his health problems.

Question No. 11:

THIS PETITIONER WAS DENIED HIS DUE PROCESS RIGHTS UNDER THE UNITED STATES CONSTITUTION BECAUSE THE "COMPENSATED REFEREE" WAS ACTUALLY CORRUPT

The Due Process Clause guarantees a fair trial, yet the State Bar Referee overreacted with regard to the discipline because of pretrial publicity and the political pressures that were brought to bare by the California State Legislature, and because the "Compensated Referee" was paid to rule in the State Bar's favor.

The Due Process Clause of the Fourteenth Amendment provides that an accused shall have a fair trial. This right was denied because the paid Referee was actually corrupt!

NLRB v Phelps 136 F 2d 562 (Fifth Circuit 1943) states that bias or prejudice can be proved by remarks or

conduct of the trier of fact, in this case, the State Bar's "Compensated Referee."

The State Bar's paid Hearing Referee totally ignored the test of Dole v. State Bar of California 15 Cal 3d 973 concerning discipline, which included the following items:

a) previous record (No prior discipline against this petitioner)

b) The lawyer's personal problems (severe personal health problems which included ulcerative colitis which caused him to lose 25 lbs and 40 lbs of body weight due to uncontrolled bleeding, in two separate instances, one of which had involved a lengthy hospitalization, during Haschemi, Ghasemloo, Mayes, Phyillaier and temporarily dishonored check matters.)

c) reparation to complaining

witnesses (Refunds were made without admitting liability to all persons concerned, in a spirit of good will, and all checks were made good as soon as the problems were discovered)

d) motive and intent

(Both the State Bar's Prosecutor, Jerome Fishkin, as well as the States Bar's paid Hearing Referee, Authur Bridgett, expressed at the hearing in San Francisco, enormous disdain for this petitioner's Christianity and the testimony of his Pastor, who testified, along with others, as to this petitioner's excellent moral character.)

Even assuming the worst, the sentence imposed was far greater than that imposed in similar cases. See Alkow v State Bar 38 Cal 2d 257, Roseman v State Bar 39 Cal 3d 539, Lewis v. State Bar 28 Cal 3d 693, Ritter v State Bar 17 Cal 3d 605, Sullens

v State Bar 15 Cal 3d 609, Magee v State Bar 13 Cal 3d 700, Frazier v State Bar 43 Cal 3d 564, all of which involved temporary suspension, not disbarment! The California Supreme Court plucked out a completely unauthorized statement by this petitioner's later retained lawyer for the Supreme Court hearing, and mistakenly concluded an admission was made that "some imposition of discipline was warranted." Instead, the disbarment should be summarily reversed, pursuant to United States Supreme Court Rule 23.1, for numerous grounds, herein enumerated.

All reasonable doubts must be resolved in favor of the accused in California State Bar proceedings. Skelly v State Bar 9 Cal 3d 502. This was not done by the State Bar's "Compensated Referee."

State v. Brown 124 Ariz. 97, 602,

P.2d 478 (1979) involved inconsistencies between a witness' testimony at trial and the pretrial questionnaire. In that case, the trial judge actually informed one side of these inconsistencies, and it was found that this violated the judge's duties to be impartial.

In the present case, there were many, many inconsistencies between witness' pretrial complaint statements and their testimony and the other evidence at trial.

For this reason, as well as the other reasons herein listed, this petitioner hereby requests that the order of disbarment be summarily reversed, pursuant to Rule 23.1 of the United States Supreme Court Rules.

Question No. 12:

THIS PETITIONER WAS DENIED HIS DUE

PROCESS RIGHTS UNDER THE UNITED STATES CONSTITUTION BECAUSE THE STATE BAR'S PROSECUTOR WAS ACTUALLY CORRUPT

The Due Process Clause of the Fourteenth Amendment provides for a fair trial, yet the State Bar Hearing Examiner should have withdrawn from the case once he realized that several of his witnesses were committing perjury. He refused to do so.

The State Bar Hearing Examiner/ Prosecutor had an ethical duty, which he deliberately breached, to withdraw from the case once he discovered the obvious perjury in regard to the Haschemi / Miller Matter; the Ghasemloo Matter; the Karen Mayes-Ulricksen Matter; and the Phyillaier Matter. The perjury was as follows:

1. The Haschemi / Miller Matter: Stephen Miller perjured himself

in saying that Haschemi controlled Tchacosh, when both the U.S. District Court as well as the Ninth Circuit Court of Appeals had ruled otherwise (See Tchacosh v. Rockwell 766 F 2d 1333, 1339.) The State Bar refused to divulge Attorney Miller's informal complaint form in this regard. (See above, as well as below discussion)

2. The Ghasemloo Matter: Stephen Miller repeated the same perjury that was used in the Haschemi count in regard to this matter. Once again, the State Bar Prosecutor refused to divulge Miller's perjured complaint form.

3. The Wetherford Matter:

Mr. Wetherford's complaint form said that Jonathan Ainsworth had

deliberately failed to communicate; yet Wetherford himself testified at trial that he did not even read correspondence that was sent to him with this petitioner's new address. (see Transcript Vol. I, pages 87-95. See also below discussion.)

4. The Karen Mayes-Ulricksen Matter: Mrs. Mayes-Ulricksen deliberately perjured herself in regard to the false and unfounded allegation that "I found out that he (Ainsworth) hadn't done anything for me."(parenthesis added). This was disproved by numerous exhibits, and the State Bar knew it was untrue, yet proceeded anyway, undaunted by the truth!

Once again another attorney,

Gary Lepper, asked Karen Mayes-Ulricksen to file the complaint in order to gain an advantage in pending litigation which he could not win on his own.

5. The Phyillaier Matter: Here the State Bar prosecuted Jonathan Ainsworth even though it had in its possession documentary proof of perjury by Phyillaier who had claimed that Ainsworth had stolen an old boat. The State Bar had a signed copy of the Bill of Sale for the old boat from Phyillaier to Ainsworth, as well as a handwriting expert's report that it was in fact Phyillaier's genuine signature. This contradicted Phyillaier's perjured complaint (See exhibit

ZZ, formerly State Bar exhibit 99), yet the State Bar's Prosecutor proceeded anyway against this petitioner, undaunted by the true facts.

Since perjury is illegal, the attorney, in the present case the State Bar Prosecutor:

> "must withdraw if continued employment will result in violation of a Disciplinary Rule [DR 2-110(B)(2)]. Since the Disciplinary Rules forbid the knowing use of perjury or false evidence, withdrawal is mandatory unless permission is denied by the tribunal before which the case is pending." Quoted from Professional Responsibility in a Nutshell, Aronson and Weckstein, 1980, West Publishing Company. (Emphasis added)

The State Bar Prosecutor also violated California Rule of Professional Conduct Rule 7-105 (1) which prohibits an attorney making a false statement to a court for introducing deliberately perjured testimony which the Prosecutor

actually knew was perjured!. See also Hawk v. Superior Court 42 Cal App 3d 108.

The State Bar's Prosecutor never should have brought the above-mentioned perjured complaints because Rule 3.8 of the Rules of Professional Conduct provides that:

> "The prosecutor in a criminal case shall: (a) refrain from prosecuting a charge that the prosecutor knows is not supported by probable cause."

Obviously, for these reasons, as well as many many others, the above five matters should have been dismissed completely!

This petitioner hereby again requests that his disbarment be summarily reversed by means of this writ petition, pursuant to United States Supreme court Rule 23.1.

This Court is asked to use its mandamus or prohibition or common law certiorari power, which it seldom uses

against a State Supreme Court Deen v. Hickman 358 U.S. 57(1958) Bucolo v. Adkins 424 U.S. 641 (1976). This extreme remedy is needed because the California Supreme Court has clearly disregarded judicial precedent of this, the highest Court, and has also, in effect, "torn up" the United States Constitution where attorneys are concerned, in order to relieve its congested court calendar and work load.

OPINIONS BELOW

On or about November 21, 1990, the Supreme Court of California, through its Clerk, mailed this petitioner a notice that it had denied this petitioner's application for a writ of error coram nobis which had concerned recently discovered perjury in the State Bar judicial proceedings, as well as other

matters herein enumerated, which judgment had disbarred this petitioner effective on December 26, 1988. This and the earlier opinion of the California Supreme Court which was filed on October 27, 1988, are contained in the Appendix to this Jurisdictional Statement.

JURISDICTION

A) Authorization:

Rule 26, of the United States Supreme Court Rules states in pertinent part:

> "The issuance by the Court of any extraordinary writ authorized by 28 U.S.C. Section 1651(a) is not a matter of right, but of discretion sparingly exercised. To justify the granting of any writ under that provision, it must be shown that the writ will be in aid of the Court's appellate jurisdiction, that there are present exceptional circumstances warranting the exercise of the Court's discretionary powers, and that adequate relief cannot be had in any other form or from any other court."(Emphasis added)

All of the above mentioned conditions are met because the California Supreme Court absolutely refuses to follow United States Supreme Court precedent or, for that matter, to correct its own erroneous inconsistent findings.

Rule 26 of the United States Supreme Court's Rules provides that the writ petition must show that it "will be in aid of the Court's appellate jurisdiction." This is met because there will be numerous petitions by other attorneys in California, as well as in other states who will complain that their constitutional rights have been violated by the California Court's recent, changed approach in State Bar Proceedings which cause it to ignore Constitutional rights. The U.S. Supreme court should have some say in the matter.

"There are present exceptional

circumstance's warranting the exercising of the Court's discretionary powers," because seldom, if ever in the present time, has there been such undue regard paid to an accused's constitutional rights, and even explicit United States Supreme Court precedent, as in the present case, not to mention the extreme hardship that has been placed on this petitioner and his entire family, due to the extreme damage to his and their reputations and the depravation of this petitioner's livelihood. "Adequate relief cannot be had in any other form or from any other Court," Supreme Court Rule 26, because this petitioner has already asked the California Court to correct its error by means of an application for a writ of error coram nobis, which has recently been rejected (Please See Appendix.)

All federal courts may "issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law" pursuant to 28 U.S.C. Section 1651. Pullman vs. Allen 466 U.S. 522 (1984) states that the court should consult the common law origins of extraordinary writs.

Petitioner requests an extraordinary writ of mandamus, or in the alternative, a writ of prohibition, in the alternative, a common law writ of certiorari, pursuant to 28 USC Section 1651, which writs are used sparingly, against the highest court of a state. Nevertheless, these extraordinary writs are warranted against the Supreme Court of California, which merely "rubber stamps" the erroneous findings of the State Bar's "Compensated Referees," and

because the California Supreme Court has refused to overturn the conviction of this petitioner and has, in effect, "overruled" the United States Supreme Court regarding numerous United States Supreme Court cases. There is ample precedent for the United States Supreme Court in issuing such a writ against the Supreme Court of a state or even a lower federal Court. See Deen v. Hickman 358 U.S. 57(1958); Bucolo v. Adkins 424 U.S. 641 (1976).

The writs of mandamus and prohibition, and common law certiorari, pursuant to 28 USC Section 1651 have been used to bring before the Supreme Court of the United States otherwise non appealable orders. United States Alkalai Association v. United States. 325 U.S. 196(1965) DeBeers Consolidated Mines, Ltd. v. United States 325 U.S. 212(1945)

In Re 620 Church Street Corporation 299 U.S. 24, 26 (1936); Far East Conference v. United States 342 U.S. 570(1952); United States v. National City Lines 357 U.S. 78(1949).

The writ of mandate to the Supreme Court of a sovereign state is understandably used sparingly; but here, in the present case, the California Supreme Court has shown contempt for United States Supreme Court precedent and has become a law unto itself, totally ignoring even basic principles of the United States Constitution and the basic understanding of our federal system.

Each of the writs of mandamus, prohibition and certiorari is used on proper occasions to correct jurisdictional error. Kerr v. U.S. District Court 426 U.S. 394(1976) See also Will v. United States 389 U.S.

90(1976). The writs may be used when an appeal does not provide for an adequate remedy Maxwell v. Bishop 385 U.S. 650 (1967).

B) Specific instances:

1)The most clearly avoided United States Supreme Court decision, which the California Supreme Court paid no attention to, also involved a writ of mandate that was used by the United States Supreme Court in order to void a decision that required a three judge panel when only a single judge was used. Please see Ex Parte Northern Pacific Railway Company 280 U.S. 142. as well as Ex Parte Cogdell 342 U.S. 163 as well as Ex Parte Metropolitan Water Company of West Virginia 220 U.S. 539; Cumberland Telephone & Telegraph Company v. Louisiana Public Service Commission 260 U.S. 212, 216-217; Virginia Railway

Company v. United States 272 U.S. 658, 671-673; Ex Parte Atlantic Coast Line R. Co. 279 U.S. 822." In the present case a three judge panel was mandated by state law, yet the State Bar proceeded with a single judge, despite this petitioner's numerous protests. (Please see earlier discussion.)

2) Also, the principles announced in Wong Yang Sun v. McGrath, which requires that the prosecutor and judge cannot be employed by the same agency is also germane. In the present case, both the State Bar Prosecutor (Hearing Examiner), as well as the State Bar's "Compensated Referee," were actually employed by the same agency, The California State Bar.

3) Also, the California State Supreme Court should have granted the extraordinary writs of error coram nobis

and/or the writ of error, because of the recently discovered perjury of attorney Stephen Miller, as proved by the decision of the Ninth Circuit Court of Appeals in San Francisco, which was directly contrary to the decision on the California State Supreme Court. (Please see Tchacosh v Rockwell, 766 F 2d 1333, 1339.)

In contrast, the California Supreme Court erroneously found that Hassan Haschemi did in fact control the exact same company. This in effect allowed Hassan Haschemi, through his attorney Stephen Miller, to relitigate an issue on which they had lost and which had already been determined conclusively in the United States Court system. This was a clear usurpation by the California Supreme Court, which seems intent on establishing its own judicial precedent,

contrary to federal court rulings.

The judgment of the California State Supreme Court should be changed to reflect the true facts as determined by the United States District Court and the United States Court of Appeals in Tchacosh v. Rockwell, 766 F 2d 1333, 1339.

The United States Supreme Court has stated in Mattox v. United States 146 U.S. 140 that the appeal, in this case the writ, may properly consider all grounds that might be considered in a motion for a new trial. In addition to the recently discovered documentation of the willful and blatant perjury of attorney Stephen Miller and the deliberate perjury of the other witnesses, this also includes obviously wrong findings of fact, which may be reviewed. This is reviewable even though

it is a finding of fact because a federal right is involved. Please see Fisk v. Kansas 274 U.S. 380, 385-386; Creswill v. Knight of Pytheas 225 U.S. 24b, 261 (1912); Sterling v. Conseantin U.S. 378, 398 (1932) as well as California v. Green 399 U.S. 149, Dutton v. Evans 400 U.S. 74. (See other authority above as well.)

4) Other United States Supreme Court precedent:

Cases involving false promises of settlement to void a judgment have been ignored United States v. Throckmorton 98 U.S. 61 ; Niemotho v. Maryland 340 U.S. 268, 271; Edwards v. South Carolina 372 U. S. 229, 235 (1963); Cox v. Louisiana 379 U.S. 536, 545n 8 (1965); Findings as to waiver of a federally guaranteed right are reviewable Brookhart v. Janis 384 U.S. 1,4n4 (1966); Perjury determinations are reviewable when they involve

federally guaranteed rights Thompson v. City of Louisville 362 U.S. 199 (1960); Garner v. Louisiana 368 U.S. 157,163 (1961); Findings regarding "malice" are reviewable New York Times Co. v. Sullivan 376 U.S. 254, 285 (1964)). The landmark United States Supreme Court cases regarding pretrial publicity were totally ignored by the California Supreme Court. Rideau v. Louisiana 373 U.S. 723, and in Chandler v. Florida 449 U.S. 560. Even the Contract clause was ignored Fletcher v. Peck 10 U.S. 87 (1810); Home Building and Loan Association v. Beaisdell 290 U.S. 398. Also, excuse or justification precedent was ignored. Leland v. Oregon 343 U.S. 790., as was "totality of the circumstances" precedent Kentucky v. Whorton 441 U.S. 786. The prohibition against adding new charges at trial was totally ignored In Re Ruffalo 390 U.S.

644, 885 S. Ct. 122 as well as Cole v. Arkansas 333 U.S. 196, 201. Statutes of limitation were ignored Schiavone v. Fortune 477 U.S. 21, as was the right to confront witnesses. Pointer v. Texas 380 U.S. 400; Ohio v. Roberts 448 U.S. 56; as well as Gideon v. Wainwright 372 U. S. 335 (1963) right to appointed counsel which was taken away summarily, by faulty mailed notice.

5) Erroneous findings of fact and law cases:

Exclusion by the trial judge of evidence that was crucial to the defense and which bears substantial assurances of trustworthiness impaired the right of the accused to present a defense Chambers v. Mississippi 410 U.S. 284. Appellate courts may properly review a discretionary ruling by a trial judge, to determine whether he has abused his

power. Allis Chalmers Corp. v. Philadelphia Electric Co. 521 F 2d 360.

In California a judgment may be set aside when it resulted in a "miscarriage of justice" California Constitution, Article VI Section 4. Certain errors are so clear and fundamental that they do not even require that an objection be stated Citron v. Aro Corp. 377 F 2d 750.

These errors should have been corrected by the California Supreme Court by means of a **writ of error** or by a **writ of error coram nobis**, as requested. Also, there is a long line of cases in California where **medical illness** has been used to excuse otherwise inexcusable mistakes. The medical cases include Merchant's Ad Sign Co. v. Los Angeles Bill Posting Co. 128C. 619, 61P277, Salisbury v. Julian 98 Ca 638, 277 P. 517, Transit Ads, Inc. v. Taner Motor

Livery, Ltd., 270 CA 275, 75 Cal Rpt 848, McCreadie v. Angues 248 Ca 2d 39, 56 Cal Rptr 188.

Certain matters of fact or law are so egregious that they are subject to reconsideration Coopers and Lybrand v. Livesay 437 U.S. 463, and a judge's erroneous findings of fact may be set aside when there is "a definite and firm conviction that a mistake has been committed" United States v. United States Gypsum 333 U.S. 364.

According to the decision by the United States Supreme Court in Anderson v. City of Bessmer City 470 U.S. 564, the findings of a trial judge are the product of a single mind which may be more vulnerable to bias or idiosyncrasy; and questions such as the interpretation of contracts or other documents, such as those documents which proved Jonathan

Ainsworth's ownership of his American corporations in the Haschemi and Ghasemloo matters, are regarded as questions of law so that the appellate court may disregard any conclusions reached by the trial judge as to the meaning or effect of an erroneous interpretation of a legal document Estate of Platt 21 Cal 2d 343, This is also proved by the decision of the Ninth Circuit Court of Appeals in Tchacosh v. Rockwell, 766 F 2d 1333,1339 which conflicts so drastically with the California Court's erroneous findings.

PARTIES TO THE PROCEEDINGS BELOW

The State Bar of California said that the following individuals filed complaints with the State Bar against this petitioner. The truth of the matters are as indicated:

1. Hassan Haschemi never filed a complaint. His irate lawyer, intent on blaming this petitioner for the loss of his case, in fact filed a perjured complaint. (The State Bar refused to divulge a copy of this complaint.)

2. Farid Afshar Ghasemloo: This complaint was instead filed by the same irate lawyer who perjured himself in the Haschemi allegations. The State Bar of California once again refused to divulge copies of either of these alleged complaints.

3. The Wetherford matter : Once again another attorney, who in this case lost his case in the California State Supreme Court, sought to derail the efforts of this petitioner, Jonathan Ainsworth, who sought to recover funds for his clients which the Supreme Court had found were taken unlawfully by the complaining

lawyer's client, the County of Santa Clara. Lyle Wetherford also filed a perjured complaint, as will be documented below.

4. The Rebecca Archuletta matter: Rebecca Archuletta stated in writing that she did not file a complaint against this petitioner, nor did she authorize the filing of a complaint. Instead the complaint was filed at the behest of yet another irate attorney, and she said it was without her authorization. (See Exhibits G and FFF)

5. Karen Mayes Ulricksen actually filed a complaint which was completely disproved. The State Bar trumped up new charges which it attempted to prove. Once again, this complaint was filed at the behest of yet another attorney, Gary Leper, in order to gain an advantage which he could not gain in court.

6. Michael Phyillaier is a friend and business associate of Karen Mayes-Ulricksen, who actually filed a perjured complaint that alleged conversion of an old boat. The State Bar brought the case despite the fact that its own handwriting expert authenticated Phyillaier's signature on the bill of sale (See exhibits 99 as well as ZZ).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The right to a fair trial is embodied in the Bill of Rights to the United States Constitution. This petitioner complains that the following rights, among others, were denied him:

Article VI "In all criminal prosecutions the accused shall enjoy the right...
to be confronted with the witnesses against him; to have compulsory process for obtaining witness in his favor and to have the assistance of counsel for his defense."

Article XIV
"nor shall any State deprive any person of life, liberty, or property, without due process of law."

Article I Section X, The Contract Clause of the United States Constitution states that, "No state, shall...pass any...law impairing the Obligations of Contracts..."

The Administrative Procedure Act Section 554 (d), whose spirit was violated, was designed "to curtail and change the practice of embodying in one person or agency the duties of prosecutor and judge."

State Bar Rule 558 deals with three judges in California disciplinary proceedings.

The above is only a partial listing of the constitutional and statutory violations that the State of California, and the State Bar's "Compensated Referee" committed against this petitioner.

The court is respectfully urged to

issue one of the extraordinary writs and readmit this petitioner to the practice of law summarily.

STATEMENT OF THE CASE

Facts and Argument

The Hassan Haschemi/Stephen Miller Matter

It is clear that the California State Supreme Court should have granted the application for a writ of error coram nobis to correct the perjury of attorney Stephen Miller in regard to this count. Rollins v. City and County of San Francisco 37 Cal App 3d 145; People v. Black 89 Cal App 225, 264 P 346; Hiawassee Lumber Company v. United States 64 F 2d 417. Instead, the California Supreme Court's Clerk wrote this petitioner on or about November 21, 1990, to say that the application had been denied. This was the first notice that was sent to this petitioner in this regard. Time begins to run from notice.

The decision by the Ninth Circuit Court of Appeals, which Stephen Miller

had deliberately omitted in his testimony at the State Bar hearing, is directly contrary to the holding of the California State Supreme Court, which erroneously allowed Hassan Haschemi to, in effect, relitigate the control issue of Tchacosh, which he had already lost in the federal courts. See Tchacosh v. Rockwell, 766 F 2d 1333, 1339

In the present case, the California Supreme Court erroneously found that Hassan Haschemi controlled Tchacosh, and that, by implication, that he could bring a complaint against this petitioner, even though the United States District Court and the Ninth Circuit Court of Appeals had previously found to the contrary:

"The Iranian decrees divesting Haschemi of authority to bring suit on behalf of Tchacosh will be given effect.

"Accordingly the District Court's grant of summary judgment in favor of Rockwell is affirmed." (Emphasis added Tchacosh v. Rockwell 766 F 2d 1333, 1339.)

The erroneous ruling of the

California Supreme Court (See pages 4-7 of Appendix) may be overruled according to the authority cited previously in these papers.

The United States Courts had found that Hassan Haschemi was an impostor, and that he didn't even have legal authority to represent Tchacosh. Ainsworth's 100% ownership of Petru International Corporation could never be seriously disputed by anyone until the California Supreme Court's mistaken ruling (See Appendix page 6). Ainsworth owned, founded and even named Petru, which is similar to the motto for the Plimsol Club, which is in the World Trade Center, (formerly the International Trade Center) in New Orleans, an acronym for "peace through trade and understanding," which appears on the wall of the Plimsol Club in New Orleans, Louisiana. As far as this petitioner knows, Hassan Haschemi

has never even been to the Plimsol Club in New Orleans, which is this petitioner's home town. Additionally, this petitioner's ownership is proven by means of a copy of the stock certificate which proved Jonathan Ainsworth owned 100% of Petru. (See exhibit 20c plus Exhibit KKK which are corporate organization documents of this petitioner's American corporations.) Hassan Haschemi, an Iranian, formerly had Iranian companies which had been organized in Iran, not in the United States. It is plain, obvious and harmful error for the State Bar of California to have totally ignored the differences between the American corporations, which were owned by Jonathan Ainsworth, an American, and the Iranian companies, which had been owned by Hassan Haschemi, an Iranian.

The State Bar of California cannot

show that the perjured testimony of attorney Stephen Miller did not effect the outcome of the State Bar's case and so the conviction should be set aside! Hayal Glass Co. v. Hartford 322 U.S. 238.

It was proper for Ainsworth to have represented himself as well as his own private corporation, Petru, in the lawsuit. This petitioner advised the court of his ownership of Petru, then waited for the court to rule. The court took the matter under submission, then ruled, approximately six months later. Delay, if there was any, was caused by the court, which didn't appear to be in a hurry because there was a stay order in effect at the time, as in all Iranian cases at that time. (See copy of Court docket, exhibit 40, items no. 106, 107, 150.)

The stay order had been requested by the United States Justice Department for

all Iranian cases during the time that the Ayatolah Khomeini and his revolutionary government were holding American hostages in Iran, in 1979 and 1980 and part of 1981. The Tchacosh lawsuit had been stayed, and so there was no delay caused by this petitioner.

Jonathan Ainsworth did deposit copies of the court file with the court as requested, so that Hassan Haschemi could represent his own personal interests in the lawsuit, though this fact is curiously omitted in the erroneous decision of the California Court. (see Exhibit 26).

The substitution of attorneys that was sent to the United States District Court accurately reflected the proper corporate ownership on the American corporations and the Iranian companies, and did not contradict what had been requested by Hassan Haschemi, or by his

attorney, Stephen Miller. A clarifying statement only was added. (See State Bar Exhibits 7, 20, 206 as well as pages 42, 43, 44 in Appendix, which state inaccurate findings.)

The California Court's decision is written in such a way as to make it appear that Ainsworth demanded $40,000 as ransom for his own legal files. This is incorrect. The erroneous opinion conveniently fails to mention that this demand for payment reflected amounts owed by Hassan Haschemi to this petitioner on other legal matters, for which Hassan Haschemi was derelict in paying. This was the real reason that Hassan Haschemi hired attorney Stephen Miller, i.e. in order to avoid paying for legal work performed for Hassan Haschemi by this petitioner on Hassan Haschemi's Iranian rice transaction, on the refinancing on Hassan Haschemi's mansion in Beverly

Hills, on the sale of Hassan Haschemi's apartments in London, etc. Hassan Haschemi simply did not want to pay for legal services that were rendered, and so he hired another lawyer. The lawyer clearly thought that this and the filing of a fraudulent claim with the State Bar Association would make it possible for Hassan Haschemi to avoid paying Jonathan Ainsworth the legal fees owed him on the other legal matters. It worked! Filing with the State Bar made it possible for Hassan Haschemi to avoid paying this petitioner for legal work on the other legal matters which this petitioner had worked on. In any event, copies of the litigation file were deposited with the U. S. District Court (See exhibit 26.)

The U.S. District Court in Los Angeles finally recognized that Hassan Haschemi did not in fact truly control Tchacosh, and the court threw Hassan

Haschemi out of its court by means of Summary Judgment. (See exhibit 40, items 194, 196, 197, which show that Summary Judgment was issued <u>against</u> Hassan Haschemi, who the Court in effect found was an impostor, because he did not legally control Tchacosh.) Before this happened, the court at one time erroneously held this petitioner in contempt, because he was somewhat late in depositing his copy of the court file in court (see exhibit 26), due to relocating his law office from Southern California to Northern California and because he was still contesting his ownership of Petru, which petitioner owned 100% of (see exhibit 20(c).)[8]

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8. It is <u>not</u> even improper for an attorney acting within the framework of the law, to refuse to comply with a court order in order to test its validity, thus appealing the order, <u>ABA Ethical Consideration 7-25, Model Code of Profession Response Rule 3</u> and a summary contempt during trial is reviewable <u>Codisport v Pennsylvania</u> 418 U.S. 506,

The U.S. District Court later realized the truth about Hassan Haschemi's ownership rights when it granted Summary Judgment against Hassan Haschemi (Exhibit 40 items 194, 196, 197). It later stated that Hassan Haschemi did not even have legal authority to bring the lawsuit in the first place, and the U.S. Circuit Court of Appeals upheld the Summary Judgment against Hassan Haschemi. (see Tchacosh v Rockwell, 766 F 2d 1333, 1339). It follows that since Hassan Haschemi did not have sufficient legal authority to file the complaint in the Tchacosh case, neither did he have sufficient legal authority to file a complaint against

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517 n 6 (1974). In fact the order was complied with, though only a few days late, because of this petitioner's relocation to Northern California. Petitioner actually brought the file to court at a later date, stipulated to by the Court. The alleged contempt was erroneous

this petitioner in the present State Bar lawsuit either!

The California courts look to rules both of civil and criminal procedure in formulating rules in State Bar hearings, Giddens v. State Bar 28 Cal 3d 730, and the question in this case is after viewing the evidence in the light most favorable to the prosecution, any reasonable trier of fact could have found the essential elements of the offense, Jackson v. Virginia 443 U.S. 307.

In the present case, this petitioner was actually charged with committing an offense against his own United States corporation, Tchacosh Company, Inc., an American corporation, which was owned 100% by Petru, which this petitioner clearly owned (see exhibit 20c, stock certificate as well as exhibit KKK, other corporate documents). The unfounded

charges were brought by a foreign national's lawyer, who had already lost in the federal courts concerning his alleged control of the corporate entity, Tchacosh.[9] When this perjury was discovered -- well after the State Bar hearing -- the California Court should

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9. It was not necessary for the retainer agreement to have provided an ownership interest in Petru to this petitioner as the State Bar mistakenly found. (See Appendix, page 44). The reason for this is because Petru, an American corporation, was never owned by anyone other than by this petitioner, Jonathan Ainsworth. (See Exhibits 20c and KKK). Judge Takasugi even asked if it was Jonathan Ainsworth's "alter ego," since Jonathan Ainsworth had founded it, named it, capitalized it, and even brought it into being! The corporate name "Petru" is based on the motto of the Plimsol Club in the World Trade Center (formerly the International Trade Center), in New Orleans, Jonathan Ainsworth's home town. The name Petru is based on an acronym for the motto of the Plimsol Club which stands for "peace through trade and understanding." It is doubtful that, if questioned, Hassan Haschemi would even be knowledgeable of this. At one time Hassan Haschemi enjoyed a very limited power of attorney regarding Petru, but it in no way affected this petitioner's 100%, total, complete ownership of Petru.

have corrected its mistake. Instead, it chose to hide its mistake under the rug by not taking any action at all. Cases in which there is a conflict between a Federal Appeals Court and a State Supreme Court are reviewable, according to the authority discussed in the jurisdiction sectionof these papers, and in Question No. 4 above. For that reason, the citations are not repeated here.

A judgment obtained through perjury, fraud or other misconduct should be reopened. Peacock Records Inc. v. Checker Records, Inc. 365 F 2d 1451, applying Fed. Rules of Civil Procedure 60 (b)(3) which is similar to the California provision.

All of the findings of fact and conclusions of law by the State Bar and by the Califorina Supreme Court in this matter are based on the erroneous conclusion that this petitioner did not

own Petru. This petitioner was merely trying to protect the interest of his American corporation, Petru, from outside attack and an attempted take over by the unscrupulous Stephen Miller, who hid the true facts of ownership and control from the State Bar Court. The charges in this matter actually referred explicity to this petitioner's own American corporation, yet the opinion relates to the Iranian company. (clearly junxtaposed.)

The Farid Afshar Ghasemloo Matter

The State Bar actually had the nerve to charge this petitioner with hiring a paralegal in order to help him recover monies owed to this petitioner's own American corporation.(The charging allegations differ materially from the State Bar and California Court's actual findings in this count, just as in the Miller/Haschemi Count.) Also, this

petitioner's alleged admissions that were contained in the State Supreme Court's erroneous ruling are incorrect. (See Appendix pp 44, 45. Such alleged admissions were never made.) In this count the California Supreme Court once again confused the facts of ownership of the American corporations, which were owned by this petitioner, with the Iranian companies which had at one time been controlled by Hassan Haschemi, because of the outright perjury of attorney Stephen Miller, as documented above. In the Ghasemloo matter, the State Bar's "Compensated Referee" erroneously concluded that this petitioner had agreed to split a legal fee with a non lawyer; yet, as alleged, this regarded representation of this petitioner's own American corporation, incredible as the charge now seems. Once again, the State Bar's "Compensated Referee" totally

ignored the exhibits, which proved this petitioner's ownership of the American corporations!

Once again, as in the Hassan Haschemi allegation, the State Bar has refused to divulge the complaining witness' report and interview notes (once again filed by Stephen Miller, the same perjuring witness mentioned above.) These would have shown the true facts of ownership and control which the State Bar as well as attorney Stephen Miller attempted to relitigate well after losing on this issue in both the United States District Court and the U.S. Court of Appeals. (See Tchacosh v. Rockwell 766 F 2d 1333, 1339.) Had the complaining witness' report and interview notes been revealed, they would no doubt have shown that this petitioner's former client, Hassan Haschemi, who was later represented by Stephen Miller, never in fact filed a

complaint himself against this petitioner with the State Bar! As it was, Hassan Haschemi never appeared at the State Bar hearing and never gave any testimony against this petitioner whatsoever, a clear violation against this petitioner's fundamental rights to confront and cross-examine the alleged complaining witnesses against him, in continued violation of this petitioner's Sixth Amendment rights. Petitioner demanded all of these constitutional rights, but they were denied him on an arbitrary basis.

Once again, neither Hassan Haschemi nor Stephen Miller had sufficient legal authority to bring the alleged complaint against Jonathan Ainsworth, because the Federal courts said that Hassan Haschemi did not have such authority, just as in the previous count. (See Tchacosh v. Rockwell, 766 F 2d 1333, 1339.)

Despite Ainsworth's formal written complaints against attorney Stephen Miller, the State Bar refused to take any action against Miller in this regard.

Petitioner requests that the order of disbarment be summarily reversed, pursuant to United States Supreme Court Rule 23.1), and that he be reinstated, immediately as a member of the California Bar and that the California Supreme Court be so ordered.

The Wetherford Matter

The complaint in regard to the Jerald C. lawsuit, which involved the Wetherfords and approximately 27 others, was filed as a class action. (which fact was conveniently omitted by the California Court in its erroneous decision. See page 10 of Appendix.)

Once again, the complaint against this petitioner was filed by another

disgruntled attorney, the attorney for the County of Santa Clara County who had lost the In Re Jerald C. case in the California State Supreme Court. Once again, this actual complaint by that disgruntled attorney against this petitioner was never disclosed. Once again, this attorney refused to testify.

In In Re Jerald C., the California State Supreme Court outlawed the practice of California counties charging parents for room and board for their minors while they were incarcerated in California's juvenile halls. The California Supreme Court first decided that this was a denial of equal protection, then temporarily allowed a rehearing, then reinstated, or decided again that the practice was unconstitutional.

Petitioner had been approached by numerous parents, exceeding twenty-five in number, and asked by them to recover

moneys which various California counties had taken from them unlawfully. Various class actions were filed on their behalf by this petitioner.

During the time after a rehearing had been granted in In Re Jerald C. by the California State Supreme Court, and prior to the time that the case was decided again against the various California counties, this petitioner mistakenly cited the original decision in earlier court papers.[10] As soon as the mistake was discovered, the incorrect citations were changed. No one was fooled, no one was misled, yet a Deputy County Counsel of Santa Clara County, who later lost the In Re Jerald C. case in the California Supreme Court, sought to derail the

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10. California Rule 7-105 was not violated, since it refers only to "knowingly" citing improper authority. Improper findings of "malice" are reviewable by this court. New York Times Co. v. Sullivan 376 U.S. 254, 285 (1964.)

claims of the parents by attacking their attorney through the State Bar. Said attorney failed to testify against this petitioner in violation of the confrontation clause of the United States Constitution. Despite the fact that this petitioner later changed the mistake in the citations, he was charged with and actually convicted of allegedly deliberately perpetrating a fraud on the court.[11] Absurd as this seems, the simple explanation and profound apologies for this inadvertent mistake, which fooled no one and caused absolutely no harm whatsoever, were drowned out by the documented hysteria and political pressure to obtain convictions at all costs that then existed at the California State Bar, particularly in San Francisco,

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11. Erroneous findings regarding "malice" are reviewable. New York Times Co. v. Sullivan, ibid.

where the Hearst newspaper and certain state legislators were then on the warpath, as previously proved. Convictions at all costs was the order of the day, never mind the truth! (See Transcript, Volume VIII, page 83, lines 8-25 through page 84 lines 1-8.)

Mr. Wetherford was one of the approximately 27 clients who had retained this petitioner to pursue the claim for reimbursement of moneys paid to California counties in regard to the Jerald C. case. (This fact was curiously omitted from the opinion of the State Bar and therefore from the California Supreme Court's opinion as well. See Appendix at page 10.) This petitioner felt sorry for Mr. Wetherford, who had said he had limited funds, and agreed to represent him for the total sum of $500, which was reimbursed to him after he complained. (See Exhibit B.) Apparently, he was the

only one of the approximately 27 clients who erroneously felt he had not received adequate communications from this petitioner, since he was the only one who filed a complaint with the State Bar, yet he admitted in his testimony under oath that he did not even bother to read correspondence, which he admitted in testimony he had received from this petitioner's new law office address! (See Transcript Vol. I pages 87-95, 107.) Mr. Wetherford deliberately perjured himself since his testimony under oath clearly contradicted his earlier written complaint form against Jonathan Ainsworth. State Bar exhibit 100 clearly shows this. The Wetherford complaint states, in pertinent part:

"...We have not heard from him, and we do not know where he is. We do not even know if this claim has been filed,...";

yet he admitted receiving several items of correspondence at the hearing, but

actually testified he did not bother to read them. (See above).

Undaunted by this testimony, the State Bar's "Compensated Referee," whose conclusions the California Court went along with, even concluded that there was no failure to communicate, yet astoundedly convicted this petitioner of failure to communicate, contradicting even himself within the space of even a few sentences! (See Decision of Hearing Panel, page 15, line 14, as well as the California court's erroneous ruling which is in the Appendix at pages 12 and 13. The California Court incorrectly juxtaposed the Referee's erroneous findings in an attempt to make seemingly logical, though not factual or accurate, sense out of them.) This petitioner was disbarred by an obviously senile, well-paid and completely arbitrary Hearing Referee who, simply put, was

paid by the California Bar to produce convictions! "Misguided" is too mild a word. A travesty of justice is more appropriate![12]

The disbarment should be overturned summarily, pursuant to U.S. Supreme Court Rule 23.1. (The admissions which The Supreme Court erroneously felt this petitioner made, as erroneously reported in the Decision at pages 44 and 45 of the Appendix are totally incorrect. No such admissions were ever made.)

The Archuletta Matter

Mrs. Archuletta said that she never actually filed a complaint against this petitioner with the State Bar. (See exhibit F, paragraph 3.) The true facts were related by Mrs. Archuletta, though

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12. Erroneous findings regarding "malice" are reviewable. New York Times Co. v. Sullivan, ibid

she refused to testify against this petitioner. She said in writing that said complaint was unauthorized as well as unfounded. Mrs. Archuletta stated in writing that:

"I did not authorize a complaint to be filed against Mr. Ainsworth with the State Bar. Mr. Ainsworth has continued to represent me and other members of my family since this occurred and has always operated in a professional manner."(See Exhibit F, paragraph 3, Emphasis added).

Mrs. Archuletta refused to appear to testify or to complain at all. What follows is a clearly trumped set of charges and findings, which totally ignore both the facts as well as the law.

This case involved a personal injury to Mrs. Archuletta's minor son. The "Compensated Referee," who the State Bar paid to convict this petitioner, wrote the opinion in such a way as to make it appear that this petitioner received minor's funds without obtaining prior court approval. The truth of the matter

was that this petitioner was paid in advance from the parents' funds, not the minor's funds. This did not require advance court approval as a minor's compromise since the parents were not minors, and it was their funds, not their child's funds. This clear juxtaposition of facts by the "Compensated Referee" may well reflect the Referee's total ignorance of the law; worse still, it may reflect the "Compensated Referee's" total failure to even read the exhibits at all. (See Exhibit 59 which clearly shows that insurance checks were made payable to the parents, who were insured and indemnified for the medical costs that they incurred. This petitioner was simply paid by the parents, from their own money, thus not requiring advance court approval, since the parents were not minors.) Still worse, this whole scenario is probably the result of the fact that the

"Compensated Referee" was simply paid to produce convictions, because of the enormous pressures then being applied to the State Bar by both the California State Legislature as well as by the "yellow journalistic" San Francisco Examiner. "Damn the facts and the law! Full speed ahead!" seems to have been the battle cry. (with full apologies to John Paul Jones).

This count actually involved an unwed mother, who later married her son's father's brother (true!), then later slammed a safe door on her son's finger, breaking it in the process. (It was not an automobile accident as the "Compensated Referee" and the State Supreme Court, which obviously did not even read the exhibits, nor correct their own mistakes, erroneously found - see Appendix at pages 13, 14.)

In the minor's compromise that

followed, this petitioner stated the facts he had been told regarding the minor child's parentage, then later corrected them, after learning the improper representations and omissions which had been originally falsified by the child's parents that concerned the child's true parentage. Here again the mistake was corrected as soon as it was learned. This should not be a disbarrable offense. Also, there was no deception by this petitioner because the minor's compromise petition accurately stated that this petitioner had been "paid"--past tense (see Exhibits 60, 61, 66).[13]

Temporarily Dishonored Checks That Were Made Good

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13. Erroneous findings regarding "malice" are reviewable. New York Times Co. v. Sullivan, ibid

Once again, the State Bar willfully and deliberately failed to produce a single complaining witness in regard to this charge, because all checks were made good as soon as possible after discovery of an admitted mistake, yet the State Bar deliberately made it appear that this was not in fact done.

During the entire course of his law practice and during the time he was in extremely poor health (See Exhibits AAA, BBB, III, JJJ, PPP, as well as Dr. Becker's testimony. Dr. Tuckman's testimony was improperly excluded), this petitioner mistakenly drew three N.S.F. checks on his personal checking account. As soon as the mistakes were discovered, the mistakes were corrected, yet the "Compensated Referee" wrote his findings in such a way as to make it appear that grand theft larceny was intended![14]

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14. Findings regarding "malice" are reviewable New York Co. v. Sullivan, ibid

The first incident involved a check for State Bar dues, which was thus late. The State Bar actually accused Jonathan Ainsworth, this petitioner, with practicing law without a license because of this, yet this incident involved this petitioner representing himself in federal court in an effort to collect a legal fee.

Anyone can represent himself in court, in pro per, regardless of his status as an attorney. It is questionable that this petitioner ceased to be an attorney as the State Bar alleged, simply because his State Bar dues were late. Regardless, there was no ethical infraction since at the time of the alleged offense, he was merely representing himself, as previously mentioned. This cannot be said to have been practicing law without a license, as the trier of fact erroneously found. (See

errors in Decision in Appendix at page 15). Once again, relevant facts and laws were totally ignored by the "Compensated Referee", who was actually paid by the State Bar to produce convictions.

Having the nerve to call self-representation in federal court practicing law without a license and a disbarrable offense is clearly erroneous. In any event, Theard v United States 354 U.S. 278 (1957), In Re Ruffalo 390 U.S. 544, 547, 885 S.Ct. 122, 124, as well as Green v. Elbert 63 Fed Rpr 308, all of which the California Court ignored in its written opinion, each state that expulsion from a State Bar Association (and thus also temporary suspension for late payment of State Bar dues as well) from a **State Bar** does not automatically result in expulsion from the **Federal bar**. The "Compensated Referee's" biased

opinion involved obvious errors, both of law and of fact. (See Appendix page 15.)

The second alleged offense involved a check mistakenly returned N.S.F. by the federal court in San Francisco, which was corrected as soon as it was discovered, the same with another check to a client, Rebecca Archuletta, who stated in writing that she did not complain against this petitioner. (See Exhibits F and G.)

In another case, the complaining witness, himself a member of the California Bar, one Paul Rein (yet another attorney), was having a torrid love affair with a married woman. In a fit of jealous rage, attorney Rein, a former golden gloves boxer, struck his victim, Mrs. Edwards, in the face, breaking her cheekbone. Mr. Rein had apparently acted deliberately, after assuming his customary boxer's stance

before delivering the knock-out punch, according to Mrs. Edwards. When this petitioner requested the pugilistics to stop and mistakenly referred to the victim, a personal friend, as his "client", the State Bar chose to once again prosecute this petitioner for practicing law without a license, because his State Bar dues were temporarily late at the time. In an egregious example of selective prosecution, the State Bar refused to take any action whatsoever against the attorney who broke his mistress' cheekbone deliberately, yet saved its full wrath to prosecute the attorney who had attempted to make peace and who made his State Bar dues current as well, (See Exhibits 72, XXX and UUU), yet the State Bar's paid Referee said nothing in his one-sided opinion in this regard.

The Karen Mayes-Ulricksen Matter

The Karen Mayes-Ulricksen exhibits showed the following inconsistencies with the findings of the State Bar's hired Referee, which were "rubber stamped" by the California State Supreme Court, which was admittedly working under a severe workload. Exhibit TT shows the entire substance of the Karen Mayes-Ulricksen alleged complaint. It states: "I found out that he (Ainsworth, allegedly) hadn't done anything for me." (parenthesis added.)

This was completely disproved by numerous exhibits, which were totally ignored by the one man "Hearing Panel." A letter dated May 19, 1982 (exhibits 80, 108 in pertinent part. A stronger worded, contemporaniously-written draft is also attached as part of Exhibit 108) These exhibits proved that the reason Jonathan Ainsworth was forced to withdraw

as Karen Mayes' attorney were the following, which were never mentioned by the State Bar's "Compensated Referee":

1. Mayes-Ulricksen had refused to turn over subpoenaed records while in litigation.

2. Mayes-Ulricksen had asked this petitioner to probate a forged will and to submit a backdated check in order to make a fraudulent insurance claim on an expired life insurance policy regarding her recently deceased husband. (Compare forged will, exhibits KK and LL, to exhibit MM, notarized copies of real handwriting. The forged will was an obvious fraud.)[15]

3. Work ceased on a third case

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15. In withdrawing, this petitioner simply followed the principles of Model Rule 1.6 which states that withdrawal is mandatory when the client insists on perjury

pending client's instructions.

4. Alleged wrongful death case involving client's deceased husband against hospital and doctors which had been referred to a malpractice law firm for investigation, (Bruce Walkup's office in San Francisco), which concluded no probable cause to believe health care providers responsible (Letter from Bruce Walkup's office is attached to and part of Exhibit II).

5. Client's broken leg: case settled.

6. Sale of service station from client to Phyillaier: completed.

7. Work ceased on the seventh case per client's instructions.

These exhibits, plus numerous other exhibits, which were produced at the State Bar hearing, proved beyond a shadow of a doubt that the written allegations

in the alleged complaint form that was made by the complaining witness that, "I found out that he hadn't done anything for me," was pure perjury on the part of Karen Mayes-Ulricksen.

Karen Mayes-Ulricksen was obviously a witness who could not be trusted to tell the truth, yet the State Bar and its hired Referee believed everything she said, swallowing her statements, "hook, line and sinker." Her erroneous statements are the basis for most of the erroneous findings.

The Karen Mayes-Ulricksen matter involved the untimely death of one of petitioner's clients, Jim Mayes, at age 40. Petitioner, the Probate Court Judge, a Deputy District Attorney, and the local Coroner's Office, all suspected that the client was killed by his wife who later married her live-in boyfriend, who was also the same paramedic who had taken her

husband to the hospital and had apparently aided Karen Mayes in administering overdoses of a wide assortment of prescription drugs, which the wife even later even admitted administering! (See Transcript Vol. III, page 54 lines 21-25. See also exhibits DD, 108 in pertinent part, as well as Reporter's Transcript, Volume IV, pages 110-125) After Karen Mayes' husband died from the drug overdose, she married the live-in-boyfriend-paramedic who had actually driven her husband to the hospital. She thus became Karen Mayes-Ulricksen (the paramedic's last name).

Nix v. Whiteride 106 S. Ct 988 was decided by the United States Supreme Court in 1986, the exact same year that Ainsworth's trial took place, prior to the time that the Hearing Referee ruled in the Ainsworth case. In Nix, the

United States Supreme Court held that it was not improper for an attorney to threaten to tell the trier of fact of a client's perjury.[16] For the State of California to disbar this petitioner for doing what the United States Supreme Court specifically authorized is unconscionable! Also, this petitioner was legally and ethically required to divulge physical evidence of crimes committed by Karen Mayes-Ulricksen, according to California law Penal Code Section 135; In Re January 1976 Grand Jury 534 F 2d 719; State v. Olwell 394 P 2d 681; Morrel v. State 575 P 2d 1200.

Communications regarding future

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16. An attorney must disclose the fraud of his client upon a Tribunal DR 7-102(B)(2), and an attorney has a duty to reject illegal cases. An attorney cannot cooperate in violations of the law California Business and Professions Code Section 6068 (c); DR 7-102. In the present case, Ainsworth's rejection of the Mayes cases was justified.

crimes such as probating a forged will, as Karen Mayes had requested, in the present case, are not privileged communications between an attorney and a client California Evidence Code Section 956, nor are future crimes that would cause serious damage to members of the public Tarasoff v. Regents of the University of California 17 Cal 3d 425; see also Los Angeles County Bar Association Opinion 353. Jonathan Ainsworth's duties to his former and now deceased client, Jim Mayes' heirs, had to be considered, yet the Supreme Court of California's erroneous opinion conveniently omits mention of this.

Petitioner stated his good faith belief, on information and belief, to the Probate Court, to the District Attorney's Office and in other litigation with Mayes that she was guilty of foul play in regard to her deceased husband, who died

of an overdose of pills that were prescribed to and administered by his wife. (See Transcript, Vol. III, p54, lines 21-25.) There was a Coroner's Inquest (part of Exhibit DD), as well as other highly suspicious circumstances, all of which pointed to Karen Mayes-Ulricksen and her paramedic boyfriend as the guilty parties. Petitioner merely restated the facts (as described above), and stated his own personal belief, on information and belief. For this, the Hearing Referee disbarred petitioner.[17]

Petitioner's acts were reasonable:

a) The District Attorney's Office thought there was probable cause. (See Testimony of ex-Assistant District Attorney Kenton Alm at

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17. Once again erroneous findings regarding this petitioner's alleged malice are reviewable See New York Co. v. Sullivan, ibid.

Volume IV pages 110-125 of Reporter's Transcript).

b) The Probate Court Judge, Judge Spelberg, thought that there was **probable cause**, and ordered a criminal investigation. (See Exhibit DD, in pertinent part.)

c) The Coroner's Office thought that there was **probable cause**, and the matter serious enough to warrant an investigation. (See Exhibit DD, in pertinent part.)

Other plain error committed by the State Bar's Hearing Referee included completely ignoring:

a) The right of an attorney to reveal confidences that involved **"on-going crimes."** Alexander v. U.S. 289 U.S. 1, 53, S. Ct. 465, Fusten v. U.S. 22 F 2d 66.

b) The right, indeed the obligation of an attorney to reveal a **forged**

will by a former client, was consistently ignored by the "Compensated Referee," who was paid by the State Bar to produce convictions. Greenough v. Gaskell 1 Myl & K 98 Eng Rpr. 618; Reg v. Cox LR 14 QB Div (eng) 153 CCR; Reg v. Avery Cqar & p. 596, 173 Eng Rptr. 633; Strong v. Abner 268 Ky 502, 105 SW 2d 599; Bonner's Succession 192 La 299, 187 SO 801. This was particularly true since the forged will involved the interest of another of this petitioner's clients, i.e., the deceased husband, Jim Mayes' rightful heirs.

c) The right of an attorney to testify regarding "**frauds**" committed by a client include Thomas v Jones 105 W Va 46, 141 SE 434; People v Peterson 60 App Div 118, 69 NYS 941; Ridener v Corn 256 Ky 112, 75 SW 2d

737, People v Mahon 1 Utah 205. All of these cases were totally ignored by the State Bar's "Compensated Referee."

Other jurisdictions, including the ABA Model Code as well as others, allow the type of conduct which the State Bar of California complained of.

The American Bar Association standard, allows in DR4-101(C) that:

> "A lawyer may reveal:
> (3) the intention of his client to commit a crime and the information necessary to prevent the crime.
> (4) confidence or secrets necessary to establish or collect his fee or to defend himself or his employees or associates against an accusation of wrongful conduct."

Both of the above code sections allow the above mentioned conduct of petitioner. This is contrary to the findings of the California State Bar (see Appendix ages 19, 20). The Supreme Court of the United States has also agreed in principle with the actions that were

taken by this petitioner, though the California Court disagrees and adamantly refuses to follow United States Supreme Court precedent:

> "There is a privilege protecting communication between attorney and client. The privilege takes flight if the relationship is abused. A client who consults an attorney for advice that will serve him in the commission of a fraud will have no help from the law. He must let the truth be told (Emphasis added) Clark v U.S. 299 U.S. 186, 187.

The State Bar's "Compensate Referee" who was paid by the State Bar to decide the case its way, committed plain error by ignoring and apparently not even bothering to read any of the applicable law in this area. None of the law was discussed by the paid Referee.

The State Bar conviction should be overturned summarily, pursuant to United States Supreme Court Rule 23.1, and this petitioner returned to good standing as a member of the California State Bar at

once.

The Phyillaier Matter

Phyillaier was a business associate and friend of Karen Mayes-Ulricksen, the previously mentioned complaining witness. Phyillaier's informal complaint that was filed with the State Bar is likewise replete with perjury, so much so that even the State Bar's "Compensated Referee" admitted it was disapproved, even though he chose to bury this finding in the transcript (see Transcript Vol. IX, page 120, lines 22-24).

In the State Bar's Exhibit 91, the complaining witness, Michael Phyillaier perjured himself! His handwritten note on a copy of the bill of sale for an old boat from Phyillaier to this petitioner shows Phyillaier's perjured statement, i.e. a completely unfounded allegation that the bill of sale was a forgery.

(Phyillaier had previously been unable to sell an old boat and specifically asked this petitioner to take it off his hands. Money from the later sale of the boat was sent to Phyillaier when he later complained, in a spirit of compromise.)

Phyillaier's completely false allegations were completely disproved by another of the State Bar's own witnesses, a handwriting expert. State Bar Exhibit 99, which later became this petitioner's Exhibit ZZ, concluded, "...there are no clear indications that Q-1 document was contrived," thus disproving the completely unfounded and deliberately perjured allegations of Michael Phyillaier, whose mental capacity was impeached at trial.

Completely ignoring the truth, and despite its own documented evidence which totally disproved the unfounded charges, the State Bar prosecuted this petitioner

for allegedly stealing the old boat anyway, despite the fact that it had written proof of absolutely no foul play on this petitioner's part.(Incredible as that may seem. Still more prosecutorial abuse!)

Michael Phyillaier's application for reimbursement which was filed with the State Bar was also denied, a fact which does not appear on the hired Referee's highly selective decision, nor does he mention in his decision that he finally ruled against Phyillaier on the stolen boat allegation, but preferred to bury this ruling in the transcript of the hearing. (See Transcript Vol. IX, page 120, lines 22-24.)

Uncontent with this, the State Bar Prosecutor dreamed up totally new charges during the trial itself and was successful in adding them at trial, despite objection and despite both

California and United Supreme Court cases which specifically prohibit this practice as obvious departures from due process. (see In Re Ruffalo 390 U.S. 644, 885 S. Ct. 122 as well as Cole v. Arkansas 333 U.S. 196, 201).

The State Bar's Prosecutor used the testimony elicited by the old charges, which he knew to be false, and which were disproved by his own handwriting expert, in order to formulate new charges during trial, (i.e., alleged failure to advise the client that he could consult another lawyer, if he wanted to, before transferring the old boat.) The truth of the matter was that Phyillaier said at the time in question that he did in fact consult another lawyer! (See Transcript Vol V, p. 143, 11 13-15, as well as Vol III, p. 57, 11 1-4.) Phyillaier and not this petitioner, had requested a change in the contract of employment from an

hourly basis to a contingent fee basis. (See false statement in Appendix on pages 21 and 22.) Common sense shows that most attorneys prefer an hourly fee rather than a contingent fee. Petitioner was accommodating yet another client, as in other matters, who said he could not afford to pay. Sole practitioners often take contingency cases because they often represent clients who say that they are unable to pay on an hourly basis, unlike the clientele of many large law firms. For this accommodation, this petitioner was brutally penalized by the State Bar.

The procedure of adding new counts during the actual trial itself is forbidden by a long line of cases In Re Ruffalo, ibid, as well as Cole v. Arkansas, ibid, this procedure is also expressly forbidden in California by Woodward v. State Bar of California 16 Cal 2d 755, 108 P 2d 407. See also In

Re Gault 387 U.S. 1., cited by the U.S. Supreme Court in Ruffalo, which prohibits this procedure in juvenile matters as well.

This petitioner did not waive his right to complain about this denial of due process. He repeatedly stated his continuing objection to the entire proceeding, as described previously.

MITIGATION

The State Bar Referee merely listed, in cursory fashion, some of the factors which he was supposed to consider as mitigation, because he was required to list them by California law. This does not mean that either he or the California Supreme Court either considered them or weighed them properly. Neither did. These included documented medical condition, refunds to all who complained, favorable character witnesses, etc. (See

Appendix at pages 25 and 26.)

AGGRAVATION

Here the Hearing Referee said that this petitioner actually lacked candor and did not cooperate with the State Bar's investigation, yet this petitioner wrote written responses to the State Bar's inquiries, some of which became part of the official record (Please see Exhibit 75, which is a typical example). The Compensated Referee also decried this petitioner's cross-examination of Michael Phyillaier, who was impeached on grounds of Phyillaier's total lack of mental competence. Phyillaier had been dismissed from employment by the County of Alameda Sheriff's Office for "mental reasons," and had even attempted suicide at least twice before ever meeting this petitioner, as was later discovered. This cross-examination was cited by the

State Bar as "aggravation", in its convoluted reasoning (see Appendix page 26), yet Michael Phyillaier actually testified against Jonathan Ainsworth despite his promise in writing to dismiss (See exhibit CC) his alleged claim, and after having received a refund of the value of the old boat from its later sale, from this petitioner, in a spirit of compromise. The "Compensated Referee" even ruled against Phyillaier in this regard; however, the "Compensated Referee" chose to bury the ruling against Phyillaier in regard to the old boat in the transcript (Vol.IX page 120 lines 22-24) instead of reporting it in the light of day.

An unfortunate result of this exchange was that the "Compensated Referee" actually began yelling at this petitioner, which made cross-examination of any other witness impossible.

REASONS FOR GRANTING THE WRIT

The provisions justifying issuance of the writ(s) are as previously discussed on the first page under "Questions Presented," as well as in the earlier "Jurisdiction" section. This section will address the substantive issues as well. The authority is contained elsewhere in the body of these papers.

1) The California Supreme Court was apparently unaware that only one judge decided the case (See decisions in Appendix at page 42, in which the California State Supreme Court mistakenly refers to the "members" (plural) of the hearing panel). In actuality, there was only one member (singular), in clear violation of Rule 558 of the State Bar's own rules. This Court has remedied this previously, using an extraordinary writ, in Ex Parte Northern Railway 280 U.S. 142

(1929), as well as in Ex Parte Cogdell 342 U.S. 163 and in Ex Parte Metropolitan Water Company of West Virginia 220 U.S. 539; Cumberland Telephone & Telegraph Company v. Louisiana Public Service Commission 260 U.S. 212, 216-217; Virginia Railway Company v. United States 272 U.S. 658, 671-673; Ex Parte Atlantic Coast Line R. Co. 279 U.S. 822.", In these cases the Supreme Court vacated such decisions, using extraordinary writs as asked for in the present case!

This petitioner had requested that the Supreme Court of California give him a new hearing, before three impartial referees, but the California Court has refused. This is clearly in violation of Rule 558 of the California State Bar Rules, as well as the above United States Supreme Court cases. This petitioner has no other alternative but to request a writ before this Court, since the

California Court refuses to follow the law.

2) Also, the State Bar hired and paid the State Bar's "Compensated Referee," as well as the State Bar's Prosecutor. This overt conflict of interest violates the principles embodied in the Administrative Procedures Act, Section 554(d), as announced by the United States Supreme Court in Wong Yang Sun v. McGrath 339 U.S. 33, 41, 70 S.Ct. 445,450.

3.) Also, the California Court refuses to correct the outright perjury of attorney Stephen Miller, which perjury, as well as the other matters mentioned herein, were brought to the California Court's attention by means of a Petition for a Writ of Error Coram Nobis or for a Writ of Error, which were denied. The holding of the California court is in direct contradiction of the true facts as decided by the U.S. Ninth Circuit Court

on Appeals in San Francisco in Tchacosh v. Rockwell 766 F 2d 333, 1339, and this is correctable for the same reasons described in the "Jurisdiction" section above and elsewhere in these papers. The State Bar also introduced numerous items of perjury, which are also reviewable according to that authority.

This petitioner was only recently advised of the California Court's rejection of the Petition when the Clerk mailed notice to him on or about November 21, 1990.

4) In addition, documented pretrial publicity and political pressure prior to this petitioner's trial made a fair trial impossible. Rideau v. Louisiana 373 U.S. 723, Chandler v. Florida 449 U.S. 560

All of these were previously brought to the attention of the California Court in the Application for a writ of error coram nobis, and so were the matters that

follow.

5) New charges were added at trial, in violation of United State Supreme Court precedent, as well as this petitioner's constitutional right "to be informed of the nature of the cause against him." (citations omitted here, see above).

6) Petitioner was also fraudulently induced not to contest most of the charges by false promises of settlement, on the part of the State Bar's Prosecutor, and a case can be reopened because of such fraud on the part of the prosecution. (Citations are above in these papers.)

7) Certain so-called "complaining witnesses" refused to testify at all, in violation of the confrontation clause of the United States Constitution, yet these charges were allowed to stand. (Citations mentioned above in these papers.)

8) Contracts to dismiss many charges,

which involved full and complete releases, were "impaired" by the State of California, in violation of Article I Section 10 of the United States Constitution, the Contract Clause, yet the California Court let the conviction stand. (Cites above.)

9) There were numerous additional examples of lack of due process and a fair trial, which include but are not limited to, outright bias and prejudice on the part of State Bar's "Compensated Referee" as well as by the State Bar's Hearing Examiner (See above discussion. Also, this petitioner's court-ordered attorney was taken away with little notice, without due process, in violation of the holding in Gideon v. Wainwright, infra, as well.

10) This will "aid the Court's appellate jurisdiction" since there are numerous petitions that can be expected from

attorneys in California because of the newly instituted State Bar's illegal Procedures. There are "exceptional circumstances" because a great injustice has been committed, not only to this petitioner but also to United States Supreme Court precedent, and to the very fabric of the United States Constitution as well. This petitioner has attempted to get the California Supreme Court to remedy these violations, by means of writ applications, yet it refuses. The United States Supreme Court should have something to say regarding to this clear usurpation of its power.

CONCLUSION

For the foregoing reasons, this petitioner prays:

1. That a writ of mandamus, a writ of prohibition or else a writ of common law certiorari, pursuant to 28 USC 1651

immediately issue from this Court, directed to the Supreme Court of the State of California, requiring said Court to show cause pursuant to United States Supreme Court Rule 23.1, why it should not be directed to summarily vacate the disbarment of Jonathan Ainsworth, which was filed on October 27, 1988.

2. Petitioner respectfully requests, in light of the extreme prejudice to both him, to his career and to his family, that these obvious constitutional abuses be immediately remedied by means of summary reversal of the clearly erroneous judgment of the California Supreme Court, pursuant to Rule 23.1 of the United States Supreme Court Rules, and that this petitioner be immediately reinstated as a member in good standing of the California State Bar as well, or else that the California Supreme Court be ordered to do so at once. (This petitioner was

convicted summarily without due process, therefore his conviction should be summarily overturned, at bare minimum crediting this petitioner with "time served", and closing the books on this matter in the process.)

3. That this petitioner have such additional relief and process as may be necessary and appropriate in the premises.

December 24, 1990.

Respectfully submitted

In the Fifth Circuit

Jonathan Ainsworth
2237 South Acadian
Suite 301
Baton Rouge, Louisiana 70808
(504) 923-0311
Petitioner, In Proper Person